United Nations A/72/169

General Assembly

Distr.: General
19 July 2017

Original: English

Seventy-second session
Item 28 of the provisional agenda*
Social development

Social development challenges faced by persons with albinism

Report of the Secretary-General

Summary

The present report contains a discussion of the main social development challenges faced by persons with albinism, taking into consideration the specific challenges faced by women and children and primarily focusing on the barriers in access to health, education, employment and participation in political, social, civic and cultural life. Drawing upon the collective promise of the 2030 Agenda for Sustainable Development to "leave no one behind", the present report provides a framework for conceptualizing and removing those barriers to social inclusion and a description of existing policy responses. Recommendations are made to Member States, the international community, civil society organizations and the private sector.

* A/72/150.

17-12219 (E) 270717

Please recycle

I. Introduction

1. In its resolution 70/229, the General Assembly expressed concern that persons with albinism[1] were disproportionately affected by poverty, owing to the discrimination and marginalization that they faced, and recognized the need for resources to develop and implement programmes to prevent and combat prejudice and to create an environment conducive to respecting their rights and dignity. The Assembly requested the Secretary-General to present a comprehensive report on the social development challenges faced by persons with albinism at its seventy-second session.

2. The present report provides an overview of those issues, taking into consideration the specific challenges faced by women and children and primarily focusing on the barriers in access to health, education, employment and participation in political, social, civic and cultural life.

3. In December 2016, a questionnaire was sent to Member States, non-governmental organizations and United Nations entities. Responses were received from 13 States,[2] 15 non-governmental organizations,[3] and the United Nations Children's Fund (UNICEF). All examples of the social challenges faced by people with albinism included herein refer to examples provided in the responses, unless otherwise specified. The present report also includes the input of the Independent Expert on the enjoyment of human rights by persons with albinism and the Department of Economic and Social Affairs, as well as a review of the literature relevant to the topic.

4. Owing to the absence of disaggregated national statistics, information on the social situation of persons with albinism is generally deficient. There is relatively more information on the human rights situation of this population in sub-Saharan Africa, given that the issue was brought to the fore in response to reports of horrendous physical attacks against persons with albinism in some countries. Despite this information gap, testimony gathered by the Independent Expert, academic publications and news pieces, suggest that persons with albinism face similar patterns of social exclusion and discrimination worldwide.

5. In response to the reported attacks against persons with albinism, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Independent Expert have addressed human rights violations affecting persons with albinism, including attacks, killings, desecration of graves, trafficking in body parts, displacement, discrimination based on disability and colour, and challenges concerning the rights to the highest attainable standard of health and to education.[4]

6. The present report is focused on the social development challenges affecting persons with albinism. Social development is concerned with processes of change

[1] Albinism is a rare, non-contagious, genetically inherited condition that affects people worldwide regardless of ethnicity or gender. It is characterized by a significant deficit in the production of melanin which results in the partial or complete absence of pigment in the skin, hair and eyes (see A/HRC/24/57).

[2] Azerbaijan, Brunei Darussalam, Cameroon, Djibouti, Egypt, Guatemala, Ireland, Kenya, Malawi, Niger, Tunisia, United Republic of Tanzania and Zambia.

[3] Valeurs albinos, Albinos sans frontières, Organisation des personnes albinos du Burundi, Association pour la promotion des albinos au Cameroun, Bibliothèque le Pavillon Blanc, Association nationale des albinos de Côte d'Ivoire, Association Ivoirienne pour la promotion des femmes albinos, United Albinos Association of Liberia, Association of Persons with Albinism in Malawi, Albino Foundation, Nigeria Yerni Dada, Standing Voice, Association nationale des albinos du Togo, Community Services Program in Uganda and Zimbabwe Albino Association.

[4] For further information on the work of OHCHR and the Independent Expert, see www.ohchr.org/EN/Issues/Albinism/Pages/IEAlbinism.aspx.

that lead to improvements in human well-being, social relations and social institutions. The aim of social development is to enable all people to reach their full potential.

7. Social development is closely related to social inclusion, which is the ability of all individuals to participate fully in economic, social, political and cultural life. Discrimination and the lack of access to services and material resources are the main barriers to social inclusion. Promoting social inclusion requires both removing barriers to participation and taking active steps to improve the terms of participation in society for people who are excluded. The latter entails enhancing access to opportunities (education, health and other services), access to resources (employment and income opportunities) and participation in social, political, civic and cultural life.[5]

8. Inclusiveness and shared prosperity are the core aspirations of the 2030 Agenda for Sustainable Development. The 2030 Agenda is underscored by a collective promise to "leave no one behind", with an endeavour to start with "the furthest behind first". This promise and endeavour also apply to persons with albinism.[6]

9. Furthermore, the general principle of equality and non-discrimination is a fundamental element of the human rights framework. The latter guarantees the full enjoyment of all human rights for persons with albinism on an equal basis with others. It supports the full and effective participation of persons with albinism in society, notably by prohibiting all forms of discrimination, including on the basis of colour and disability.[7]

10. While the present report provides an overview of the barriers that persons with albinism may face and identifies solutions hereto, it does not systematically assess the magnitude of the social exclusion that effectively results from the barriers. Additional reliable information will be necessary in order to have a better understanding of the extent and depth of the social development challenges faced by this population.

II. Overview of the social development situation of persons with albinism

11. The proportion of persons with albinism varies by region. Although no recent thorough and incontestable numbers exist, estimates indicate that 1 in 17,000 to 20,000 people are affected by oculocutaneous albinism in North America and Europe,[8] while in sub-Saharan Africa the occurrence varies from 1 in 5,000 to 1 in

[5] *Leaving no one behind: the imperative of inclusive development, 2016 Report on the World Social Situation* (United Nations publication, Sales No. E.16.IV.1). Available from www.un.org/development/desa/dspd/report-on-the-world-social-situation-rwss-social-policy-and-development-division/rwss2016.html.

[6] Ibid.

[7] For a general overview of the work of OHCHR in the area of equality and non-discrimination, see www.ohchr.org/EN/AboutUs/Pages/Enhancingequalityandcounteringdiscrimination.aspx.

[8] The National Institutes of Health in the United States of America estimates the frequency of oculocutaneous albinism worldwide to be 1 in 20,000 (see http://ghr.nlm.nih.gov/condition/oculocutaneous-albinism). The National Organization for Albinism and Hypopigmentation, a national group serving persons with albinism in the United States, reports the frequency of albinism to be 1 in 18,000 to 1 in 20,000 in the United States (see www.albinism.org/site/c.flKYIdOUIhJ4H/b.9253761/k.24EE/Information_Bulletin__What_is_Albinism.htm).

15,000, depending on the country.[9] The frequency is much higher in certain geographically isolated communities and in specific groups where marriage between cousins is common, with reported rates higher than 1 in 1,000.[10]

12. Persons with albinism face discrimination and barriers that restrict their participation in society on an equal basis with others. As a result, they are more likely to experience social exclusion and poverty. Discrimination through mockery, bullying and name calling, normalized isolation and segregation, restricted access to health services and the denial of reasonable accommodation are some of the challenges faced by persons with albinism worldwide. The stigma of albinism also affects family members, notably mothers, who may experience events that have a strong and negative impact on their psychological and social well-being.[11]

13. The lack of opportunities that results from the inadequate provision and uneven geographical distribution of public services (education, health, transport, water and sanitation, among others) is another important driver of social exclusion. The insufficient provision of public services affects persons with albinism disproportionately and hence increases their risk of social exclusion. In general, persons with albinism living in remote areas risk greater social exclusion that those living in urban areas. Similarly, those living in lower-income countries have fewer opportunities to develop their capabilities.[12]

A. Intersecting forms of discrimination faced by persons with albinism

14. Discrimination is a major driver of social exclusion that continues to underpin group-based socioeconomic differences worldwide.[13] Article 2 of the Convention on the Rights of Persons with Disabilities defines discrimination as "any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".[14]

15. Persons with albinism experience discrimination based on multiple and intersecting grounds, notably colour, disability, gender, race and age. Hypervisibility is one of the root causes of the lack of acceptance and stigmatization of persons

[9] In 2005, the World Health Organization carried out a pilot survey on albinism in Nigeria, South Africa, the United Republic of Tanzania and Zimbabwe,. For the results, published in 2006, see Esther S. Hong, Hajo Zeeb and Michael H. Repacholi, "Albinism in Africa as a public health issue", *BMC Public Health*, vol. 6 (2006) and A/HRC/24/57, para. 14.

[10] The frequency of 1 in 1,000 was reported among the Tonga in Zimbabwe (Patricia M. Lund and others, "Oculocutaneous albinism in an isolated Tonga community in Zimbabwe", *Journal of Medical Genetics*, vol. 34, No. 9 (1997)), 1 in 832 among the Vhatavhatsindi in South Africa (Patricia M. Lund and others, "Oculocutaneous albinism in a rural community of South Africa: a population genetic study", *Annals of Human Biology*, vol. 34, No. 4 (2007)) and 1 in 200 to 300 among the Cuna in Panama (Östen Björnberg, "Total albinos among the Cuna Indians", *Journal of the History of Medicine and Allied Sciences*, vol. XV, No. 3 (1960)).

[11] This amounts to "discrimination by association" which is "discrimination against persons on the basis of their association with a person with a disability" (Committee on the Rights of Persons with Disabilities, general comment No. 3 (2016), para. 17 (c)).

[12] "On average, urban residents have better access to education, health care and other basic services than rural residents." For further information on social exclusion, see *Leaving no one behind: the imperative of inclusive development*.

[13] Ibid.

[14] The right to freedom from discrimination is recognized in the Universal Declaration of Human Rights and enshrined in international human rights law through its inclusion in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

with albinism. This is especially true in societies where the majority of the population has dark skin; but discrimination based on colour has also been reported in predominantly white communities, where persons with albinism are discriminated against for being "too white". Persons with albinism also experience discrimination on the basis of disability, including denial of reasonable accommodation.[15]

16. Persons with albinism may also experience further discrimination based on gender, age, race and other grounds. For example, in countries where there continues to be a de facto division of society along racial lines and skin colour is relevant to social integration, persons with albinism in dark-skinned communities are likely to experience double marginalization: for belonging to that community and for being different from members of their community.[16]

B. Disparities across regions

17. With the exception of the attacks and ritual killings, which have been reported only in some countries, the issues faced by persons with albinism are global in nature.[17] The degree to which these problems occur, however, and the impact on the lives of individuals vary by country, depending on, among other things, the general level of socioeconomic development, the availability of resources, social norms and climate.

18. While discrimination against persons with albinism is a worldwide phenomenon, patterns of discrimination are context-specific and vary in intensity depending on the social norms of the country, including the degree to which the human rights-based approach to disability has been embedded into national norms and practices, the perception of colour differences, historical experiences of racial discrimination, the level of public awareness and accurate information about the condition. For example, the stigma experienced by persons with albinism in the West, where the medical explanation for albinism is dominant, is completely different from the experience of persons with albinism living in regions where mythical and supernatural explanations prevail.[18]

19. In lower-income countries, the overlapping processes of exclusion put persons with albinism at risk. In these countries, public services and basic infrastructure are insufficiently developed. Health-care systems are underresourced. According to the Human Development Index, there are, on average, less than 2 physicians per 10,000 people in countries characterized by low human development, compared with more than 40 physicians per 10,000 people in countries characterized by very high human development. The relatively small share of the population with at least some secondary education (between 5 and 57 per cent) illustrates the fact that education standards are generally low in countries characterized by low human development. Public services are unevenly distributed, with marked inequalities between rural and urban areas. Even though basic services are relatively more accessible to the urban population, basic infrastructure remains insufficient in most cities. This makes

[15] On the multiple forms of discrimination that people with albinism face, see http://albinism.ohchr.org/human-rights-dimension-of-albinism.html or Michael Hosea, "Perspective: living with albinism, discrimination and superstition" available from www.unicef.org/sowc2013/perspective_hosea.html.

[16] Ibid.

[17] See A/HRC/31/63.

[18] For an example of a person with albinism living in a region where supernatural explanations prevail, see Michael Hosea, "Living with albinism": "practitioners of witchcraft hunt and kill us to use our hair, body parts and organs in charms and potions".

access to health care, education and other public services disproportionately difficult for persons with albinism, especially for those living in remote areas.[19]

20. Reports by the Independent Expert and other available information show that a combination of factors makes the situation of persons with albinism in of sub-Saharan Africa particularly worrying. In this region, the overall low socioeconomic development situation has a disproportionate impact on persons with albinism. In 2016, 33 of 46 countries of sub-Saharan Africa, were characterized by low human development and 11 by medium human development, according to the Human Development Index. The gross domestic product per capita in sub-Saharan Africa ranges between $562 and $28,272, with a regional average of around $4,900 (8.5 times less than in countries characterized by very high human development).[20] In these countries, between 24 and 60 per cent of the national population lives below the poverty line. One third of the population lives in urban areas, with an annual urbanization rate of 3.5 per cent.[21] Rural-urban migrants are largely employed in the informal sector, which represents 61 per cent of urban employment.[22]

21. The hypervisibility of persons with albinism in predominantly dark-skinned populations makes them particularly vulnerable to stigmatization. The proximity of countries in sub-Saharan Africa to the equator exposes persons with albinism to extreme ultraviolet radiation and exacerbates their risk of developing skin cancer. This risk is particularly acute for persons with albinism who live in rural areas and are likely to be outdoors during daylight hours. The combination of poor living conditions, discrimination and witchcraft beliefs and practices tend to exacerbate the occurrence of attacks in the region. As discussed by the Independent Expert, discrimination in the region takes extreme forms, including infanticide, physical threats, attacks and ritual killings linked to myths and witchcraft.[23] Physical attacks against persons with albinism have been reported in 26 countries. Rapid policy responses are all the more needed given that the proportion of persons with albinism in sub-Saharan Africa is comparatively high.[24]

C. Legal and policy frameworks for addressing social development challenges faced by persons with albinism

22. The international human rights framework protects the rights of all persons, including persons with albinism. The general principle of equality and non-discrimination that applies to all persons is contained in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

23. Given the intersecting nature of discrimination that they face, it has been debated whether persons with albinism are subject to further protection under the

[19] For further information on inequality and human development, see *Human Development Report 2016: Human Development for Everyone* (United Nations publication, Sales No.: E.16.III.B.1). Available from http://hdr.undp.org/en/2016-report.

[20] See A/HRC/31/63.

[21] Urbanization in Africa, available from www.afdb.org/en/blogs/afdb-championing-inclusive-growth-across-africa/post/urbanization-in-africa-10143/.

[22] African Development Bank and others, *African Economic Outlook 2012: Promoting Youth Employment* (Paris and Tunis: 2012). Available from www.africaneconomicoutlook.org/sites/default/files/content-pdf/AEO2012_EN.pdf.

[23] See A/71/255 and A/HRC/34/59 and Add. 1-2.

[24] See A/HRC/34/59 and A/71/255.

Convention on the Rights of Persons with Disabilities[25] and the International Convention on the Elimination of Racial Discrimination. Both the Committee on the Rights of Persons with Disabilities and the Committee on the Elimination of Racial Discrimination[26] have addressed the situation of persons with albinism in their concluding observations and recommendations. By doing so, they have recognized that persons with albinism fall under the protection of the respective conventions. Further protection can also be found in the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

24. The intersecting approach is particularly well suited to understand discrimination faced by persons with albinism because it takes into account historical, social and political contexts and thus recognizes the unique experiences of persons who have been the targets of discrimination on more than one ground.

25. Regarding discrimination on the basis of disability, the human rights-based approach is particularly well suited to promoting the social inclusion of persons with albinism. In the preamble to the Convention on the Rights of Persons with Disabilities, disability is conceptualized as the result of "the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others". This approach supersedes previous understandings of disability, including the medical and charitable approaches, that focused more on the individual's impairment and less on the disabling effects of society.

26. The 2030 Agenda for Sustainable Development provides an important policy framework for promoting the social inclusion of persons with albinism. Inclusiveness and shared prosperity are the core aspirations of the 2030 Agenda; these mean that every person should benefit from prosperity and enjoy minimum standards of well-being. Target 10.2 of the Sustainable Development Goals recognizes that certain people are at higher risk of exclusion than others and thus emphasizes that everyone should be included, "irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status". Accordingly, the 2030 Agenda is underscored by a collective promise to "leave no one behind", with an endeavour to start with "the furthest behind first". This promise and endeavour apply to persons with albinism.

27. Furthermore, the 2030 Agenda sets forth Sustainable Development Goals and targets that are highly relevant to the situation of persons with albinism, notably the targets focusing on persons with disabilities, for example, equal access to education (targets 4.5 and 4.A); to full and productive employment and decent work (target 8.5); to transport systems (target 11.2 and public spaces (target 11.7); empowerment and promotion of social, economic and political inclusion (target 10.2); and increased availability of high-quality, timely and reliable data disaggregated by disability

[25] The Committee on the Rights of Persons with Disabilities has addressed the situation of persons with albinism and formulated recommendations, notably under the provisions of article 5 on equality and non-discrimination (CRPD/C/UGA/CO/1, para. 8), article 8 on awareness-raising (CRPD/C/ETH/CO/1, paras. 17-18 and CRPD/C/UGA/CO/1, paras. 14 and 15 (c)), article 10 on the right to life (CRPD/C/ETH/CO/1, paras. 21-22 and CRPD/C/KEN/CO/1, paras. 19 and 20 (a)-(c)), article 19 on living independently and being included in the community (CRPD/C/UGA/CO/1, para. 39 (c)), and article 25 on health (CRPD/C/UGA/CO/1, paras. 50 and 51 (c)). The Committee's thematic considerations on the situation of persons with albinism do not preclude the implementation of the treaty in its totality to persons with albinism.

[26] In its concluding observations on a periodic report of South Africa, the Committee on the Elimination of Racial Discrimination addressed the situation of persons with albinism, expressing concern at the discrimination and stigmatization faced by persons with albinism on the basis of "colour" (CERD/C/ZAF/CO/4-8, paras. 20-21).

(target 17.18). Other relevant targets include the call for appropriate social protection systems (target 1.3); access to economic resources (target 1.4); reduced vulnerability and impact building resilience to economic, social and environmental shocks and disasters (targets 1.5 and 11.5); ending hunger (target 2.1); access to adequate and equitable sanitation and hygiene (target 6.2); and eliminating discrimination (targets 10.3 and 16.B).

III. Specific barriers to social development faced by persons with albinism

A. Barriers to access to health services

Vision services

28. The accommodation of the needs of persons with albinism concerning their particular vision impairment is an essential prerequisite for them to fully develop their potential and participate in social life.[27] Albinism includes vision impairment in nearly all cases, resulting from refractive (myopia, hyperopia and astigmatism) and non-refractive (notably nystagmus, photophobia and strabismus) impairments. In most cases, these impairments can be improved with the use of optical devices. Refractive errors can be corrected with glasses, contact lenses and low vision aids, including magnifiers, handheld telescopes and screen magnifiers. Wearing tinted lenses or lenses with special filters while outdoors protects the eyes from bright light and ultraviolet rays.[28]

29. Several studies indicate the low use of vision care devices by persons with albinism, especially in low-income countries.[29] A lack of awareness among care providers and by persons with albinism about their visual impairment partly explain this situation, as does the difficult access to ophthalmological services owing to transportation and affordability issues. In low-income countries, optical services are often concentrated in urban areas and thus are not easily accessible to people living in remote areas. Additional barriers include lack of supply, absence of accessible support, lack of repair shops for optical devices and poor social acceptance of the devices.

Preventive and curative measures relating to skin cancer

30. Persons with albinism have high skin sensitivity to ultraviolet radiation that makes them highly vulnerable to skin cancer, sunburn, rashes and premature skin ageing. The risk of developing skin cancer is about 60 times less for persons with dark skin than for persons with fair skin.[30] The head and neck are more likely to be

[27] The Convention on the Rights of Persons with Disabilities establishes the right to reasonable accommodation.

[28] See, for example, Mrinali Patel Gupta "Albinism and low vision" available from www.visionaware.org/info/your-eye-condition/guide-to-eye-conditions/albinism-6165/125.

[29] N. N. Udeh and others, "Oculocutaneous albinism: identifying and overcoming barriers to vision care in a Nigerian population", *Journal of Community Health*, vol. 39, No. 3 (2014); Patricia M. Lund, "Health and education of children with albinism in Zimbabwe", *Health Education Research*, vol. 16, No. 1 (2001); Patricia Lund and Retha Gaigher, "A health intervention programme for children with albinism at a special school in South Africa", *Health Educational Research*, vol. 17, No. 3 (2002); and Paul Lynch, Patricia Lund and Bonface Massah, "Identifying strategies to enhance the educational inclusion of visually impaired children with albinism in Malawi", *International Journal of Educational Development*, vol. 39 (2014).

[30] O. N. Agbai and others, "Skin cancer and photoprotection in people of colour: a review and recommendations for physicians and the public", *Journal of the American Academy of Dermatology*, vol. 70 (2014).

affected than other body parts. Without adequate protection, persons with albinism are likely to develop premalignant and malignant lesions at an early age and suffer from advanced skin cancers in their third or fourth decade of life.[31] Skin cancer is a major cause of morbidity and mortality of persons with albinism, resulting in shorter life expectancy for this population.[32]

31. Personal sun protection and effective public health policies can significantly reduce the harmful effects associated with sun exposure. Protective practices consist of sun avoidance, wearing protective clothing and wide-brimmed hats and applying high-protection sunscreen. Early health advice by nurses and midwives, awareness-raising on the harmful effects of ultraviolet radiation and on sun protection options and regular preventive dermatological consultations all play an important role in preventing skin cancer. Persons with albinism would benefit from public health policies that provide systematic detection, treatment and follow-up schemes for skin cancer.[33] The most common treatment consists of surgery combined with adjuvant or palliative radiotherapy.

32. Persons with albinism do not always use sun protection and dermatological services owing to their limited access to these services and/or to a lack of awareness. For example, some medical practitioners have advised mothers of children with albinism to expose their child to the sun in order to tan their light skin. The information available on the practices of persons with albinism with regard to sun protection focused largely on the situation in sub-Saharan Africa. It shows that sunscreen is not widely available there, is often unaffordable and it is often not on the national list of essential medicines. When affordable sunscreen is available at local hospitals, the cost and time involved in travelling to collect it deter many families. As with ophthalmological services, dermatological services are scarce and concentrated in urban areas.[34] This is one of the main reasons, in addition to financial constraints and popular recourse to traditional healers, why persons with albinism with skin cancer tend to present themselves late at dermatological hospitals. Moreover, the scarcity of clinical resources and the lack of funding often lead to premature termination of treatment.

Other barriers

33. Persons with albinism face other barriers to achieving the highest attainable standard of health,[35] including the unaffordable cost of health-care services, coupled with the lack of health insurance schemes and generally low socioeconomic condition. The absence of health-care services in remote and rural areas, marginalization and lack of community support are other significant barriers.

34. Stigma and discrimination are sources of depression and anxiety among persons with albinism and may also deter them from seeking medical help. For example, a study conducted in Nigeria showed that persons with albinism with

[31] Samson Kimayo Kiprono, Baraka Michael Chaula and Helmut Beltraminelli "Histological review of skin cancers in African albinos: a 10-year retrospective review", *BMC Cancer*, vol. 14 (2014).

[32] In 2002, the Zimbabwe Albino Association revealed that the life expectancy of person with albinism was 43 years, compared with 57 years for the total population of Zimbabwe.

[33] The Committee on the Rights of Persons with Disabilities has recommended that persons with albinism be included in cancer policies, paying specific attention to people living in rural areas. It has also recommended providing grants for affordable skin-care protection for persons with albinism in order to realize the right to live independently and to be included in the community (CRPD/C/UGA/CO/1, para. 39 (c)).

[34] For example, there is only one public hospital providing dermatological services in the United Republic of Tanzania.

[35] The right to the achievement of the highest attainable standard of health is inscribed in article 12 of the International Covenant on Economic, Social and Cultural Rights.

HIV/AIDS were reluctant to make use of free and available antiretroviral therapy services because of the fear of being further stigmatized.[36] Persons with albinism may also be denied access to adequate healthcare because of the ignorance of medical practitioners. For example, a woman with albinism from Malawi reported that doctors refuse to prescribe contraceptive pills to her because of the colour of her skin.[37]

B. Barriers to access to education

35. The right to inclusive education means that all persons should have access to education without discrimination and on an equal basis with others, and to be valued and accommodated according to their capabilities and value, as established in article 24 of the Convention on the Rights of Persons with Disabilities. Goal 4 of the Sustainable Development Goals affirms that inclusive and equitable education is essential for the social development of all. This would include persons with albinism. When needed, reasonable accommodation should be provided to support pupils with albinism, including shutters on windows, mobile blackboards, allowing them to sit at the front of the classroom and walk up to the board, provision of devices to help those with visual impairment, large-print materials, a copy of the teacher's notes and extra time to complete reading tasks. To reduce direct sun exposure, they should be offered the opportunity to sit away from direct sunlight and to stay in the shade in the school playground. The school uniform should also be flexible in its design to ensure that pupils with albinism can wear trousers, long-sleeved shirts and hats throughout the year.

36. In practice, however, pupils with albinism often have limited access to education. All State respondents reported high dropout rates and low educational attainment among persons with albinism.

37. Multiple barriers prevent persons with albinism from attaining higher education levels. Some parents keep their child with albinism away from school or discourage them from pursuing higher education. When they do have access to education, children with albinism are often educated in segregated educational environments (for example, special schools for blind persons), which are not conducive to social inclusion. Furthermore, misconceptions and misbeliefs, in conjunction with prejudices against persons with albinism, may result in the exclusion of children with albinism from schools. Reported cases from the Asia-Pacific region illustrate the reluctance of some school authorities to accept children with albinism owing to the fear of contagion or as a result of pressure from the parents of other children.

38. Under article 24 of the Convention on the Rights of Persons with Disabilities, pupils with albinism have the right to attend mainstream educational institutions. However, such inclusion can be challenging when institutions are not prepared to receive them. The appearance of children with albinism and the misbeliefs that surround their condition may lead to a lack of acceptance. Discriminatory comments from peers and teachers have been reported in several countries. Moreover, teachers in mainstream educational institutions are often misinformed and seldom trained in

[36] Bayo Aluko-Olokun and Adeola Abayomi Olaitan, "Skin cancer risk factor reduction in Africa: assessment of use of antiretroviral therapy services by human immunodeficiency virus positive albinos", *HIV & AIDS Review*, vol. 14, No. 1 (2015).

[37] Amaury Hauchard, "Femia, albinos au Malawi: 'le médecin refuse de me donner la pilule à cause de ma peau'", *Le Monde*, 2 March 2017. Available from www.lemonde.fr/afrique/article/2017/03/02/femia-albinos-au-malawi-le-medecin-refuse-de-me-donner-la-pilule-a-cause-de-ma-peau_5088026_3212.html.

ways to support pupils with albinism. Inclusion is especially challenging in countries where the education system is understaffed and crowded and has poor infrastructure.

C. Barriers to access to employment and income opportunities

39. Access to employment and other income opportunities, such as land ownership and loans, is an essential aspect of participation in social life. Beyond being a source of material wealth, income-generating activities also confer social identity and acceptance. Article 27 of the Convention on the Rights of Persons with Disabilities guarantees the right to "the opportunity to gain a living by work freely chosen or accepted in the labour market and a work environment that is open, inclusive and accessible", which includes of persons with albinism.

40. All State respondents reported that persons with albinism were more likely to be unemployed and to experience material deprivation. A survey conducted among persons with albinism in the United Republic of Tanzania showed that 53 per cent of the active population surveyed was unemployed, 40 per cent self-employed and 7 per cent formally employed.[38] When persons with albinism have access to employment, they are more likely to be in low-paying jobs, at lower occupational levels and with poor prospects for promotion and poor working conditions. That they are often engaged in the informal sector without social protection and struggle to make a living makes access to health-care services even more difficult, if not impossible.[39]

41. Persons with albinism face multiple barriers to access to income-generating activities. Misconceptions about persons with albinism, notably that they are less productive or have intellectual disabilities, may deter employers from hiring them. Some employers do not hire them simply because they refuse to adapt the workplace to accommodate their needs. Others are reluctant to hire persons with albinism for reasons related to their different appearance, especially in posts where the employee is in contact with the public. It is even more difficult for persons with albinism to find a decent job when they have not been given the chance to complete higher education.[40]

42. Other barriers include difficulties in securing loans to start businesses as these may be avoided by potential customers owing to myths and misbeliefs about albinism. The Association of Persons with Albinism in Malawi reported that that population was labelled as a risk group by loan institutions and small village loan savings groups.

D. Other barriers to full participation in society

43. Persons with albinism face discrimination in accessing to social protection programmes. Consultations held in 2016 in the United Republic of Tanzania by a non-governmental organization, Standing Voice, and the World Bank revealed that persons with albinism were refused State support for low-income families on the

[38] L. N. Kiprono and others, "Quality of life and people with Albinism in Tanzania: more than only a loss of pigment" *Open Access Scientific Reports* (2012). Available from www.omicsonline.org/scientific-reports/srep283.php.

[39] See, for example, Standing Voice on the situation in the United Republic of Tanzania: "Those who graduate, often leave school ostracised and unskilled, with only 7 per cent finding formal employment", at www.standingvoice.org/albinism.

[40] See A/71/255.

incorrect grounds that they were thought to be supported by external donors.[41] The Convention on the Rights of Persons with Disabilities, in article 28 (2) (b), requires States to ensure the right of all persons, including those with albinism, to enjoy social protection programmes without discrimination.

44. Stigma and discrimination also have an impact on the access of persons with albinism to adequate housing. Cases of landlords refusing to rent accommodation to persons with albinism because of fear that they would run away overnight to escape attack have been reported in Malawi and Zambia.[42]

45. Persons with albinism also experience exclusion from marital and family life. Testimony from several countries bears witness to the difficulty in finding a husband or wife and being accepted by in-laws.[43] The difficulty of having a marital life is particularly devastating in societies where marital status is a key determinant of social status, social inclusion and access to various rights.

46. In some countries, the inadequate capacity of the judicial system to address cases of discrimination, the absence of legal aid and adequate legal representation deter victims from seeking help. This perpetuates a vicious cycle of exclusion for persons with albinism who are victims of discrimination and attacks.[44]

47. In regions where albinism and prejudice regarding the condition are prevalent, persons with albinism seldom participate actively in politics, as they face and fear discrimination. However, in Kenya, there are two persons with albinism represented in the political system: a Minister of Parliament and a Judge of the High Court.

48. Persons with albinism also face barriers in access to some public services owing to discrimination and lack of accommodation. Respondent States reported difficulties for persons with albinism in reading prints on public transportation signage, and the absence of shade at bus stops.

49. Misconceptions about albinism translate into the isolation of persons with albinism being perceived as acceptable. Exclusion from social interaction, for example, on the grounds that albinism is contagious has been reported worldwide.[45] Negative attitudes, rejection and ostracism, especially from close relatives, have a strong and negative impact on the psychological and social well-being of persons with albinism and hinder their ability to fully participate in economic, social, political and cultural life.[46]

50. The media and the arts tend to support stigma and discrimination with regard to persons with albinism by reproducing belittling, negative and caricaturized

---

[41] For further information on the consultations, see: http://news.standingvoice.org/tag/world-bank/.

[42] A/HRC/34/58/Add.2, para. 28. See also The Maravi Post, "Albino woman denied access to rent house in Mzuzu; landlords fear being suspected of albino abducting and killing", 1 May 2017, available from www.maravipost.com/albino-woman-denied-access-rent-house-mzuzu-landlords-fear-suspected-albino-abducting-killing/.

[43] A survey conducted among persons with albinism in the United Republic of Tanzania indicated that 56 per cent of the respondents of marrying age were single, 30 per cent married and 14 per cent divorced or separated. Among the married respondents, 51 per cent reported problems with their partners (Kiprono and others, "Quality of life and people with albinism in Tanzania" (2012)).

[44] Article 13 of the Convention on the Rights of Persons with Disabilities provides for ensuring access to justice for persons with disabilities, including persons with albinism.

[45] The campaign by OHCHR, entitled "People with albinism: not ghosts but human beings" specifically addresses the occurrence of social exclusion, See http://albinism.ohchr.org/human-rights-dimension-of-albinism.html.

[46] See, for example, June Waugh "Social aspects of albinism" available from www.albinism.org/site/c.flKYIdOUIhJ4H/b.9260359/k.EB45/Information_Bulletin__Social_Aspects_of_Albinism.htm.

depictions of albinism.[47] Irresponsible reporting by the mass media on the attacks that occurred in sub-Saharan countries has been blamed for fuelling the attacks.[48]

E. Specific barriers faced by women and girls with albinism

51. Women and girls with albinism are exposed to multiple and intersecting forms of discrimination. They face a higher risk of sexual abuse, especially in communities where they are believed to have the power to cure HIV/AIDS or to bring good luck to the person who has sex with them.[49] They are also highly vulnerable to exploitation and abuse in the workplace.

52. Mothers of children with albinism may face rejection, ostracism and discrimination. This is common in communities where the birth of a child with albinism is considered a sign that the mother has been unfaithful.[50] This makes them, and their child, particularly vulnerable to isolation, poverty and attacks.

F. Specific barriers faced by children with albinism

53. Children with albinism are exposed to multiple and intersecting forms of discrimination. As noted by the Special Representative of the Secretary-General on Violence against Children, children with albinism are at higher risk of abandonment, stigmatization and marginalization as a result of their appearance and of their visual impairment.[51]

54. In sub-Saharan Africa, children with albinism are particular targets of witchcraft-related attacks owing to the belief that the innocence of the victim increases the potency of the witchcraft.[52] Infanticides of children with albinism have also been reported in some African countries.[53]

55. Children with albinism, and especially in marginalized groups, are exposed to a high risk of discrimination from an early age. When discrimination comes from parents and caregivers, a child is likely to develop low self-esteem,[54] which hinders his/her development of social skills and peer relationships. As mentioned above, children with albinism also experience discrimination with regard to access to education.

IV. Policies and measures addressing social development challenges faced by persons with albinism

A. International level

56. Following the report of attacks against, and killings of, persons with albinism, the situation of persons with albinism has garnered increased attention in the

[47] Charlotte Baker, "Writing over the illness: the symbolic representation of albinism", in *Social Studies of Health, Illness and Disease: Perspectives from the Social Sciences and Humanities*, Peter Twohig and Vera Kalitzkus, eds. (Amsterdam, Rodopi, 2008).
[48] A/71/255, para. 76.
[49] See A/HRC/24/57.
[50] A/71/255, para. 8.
[51] A/69/264, para. 34.
[52] See A/HRC/31/63.
[53] A/HRC/24/57, p. 9.
[54] R. J. Gaigher, P. M. Lund and E. Makuya, "A sociological study of children with albinism at a special school in the Limpopo province", *Curationis*, vol. 4, No. 25 (2002).

international community.[55] Among recent international and regional initiatives addressing the situation of persons with albinism is the creation of the United Nations International Albinism Awareness Day,[56] the appointment of the Independent Expert,[57] targeted programmes by United Nations agencies and international organizations[58] and the recent endorsement by the African Commission on Human and People's Rights of a regional action plan to end attacks on persons with albinism in Africa.[59]

B. National level

57. Although a few countries have reported specific policies for persons with albinism,[60] respondent States do not generally have such policies or legal frameworks. National laws usually include a general prohibition of discrimination and a prohibition on specific grounds. In principle, these provisions protect persons with albinism from discrimination, yet, in practice, their enforcement has many loopholes.

58. Most respondent States recognize persons with albinism as persons with impairments on the grounds of their visual impairment and, sometimes, of their skin sensitivity.[61] None of these countries recognize albinism in itself as an impairment, meaning that the impairments of persons with albinism have to be recognized under other common disabilities for them to be protected under disability policies and laws.

59. When States recognize persons with albinism as persons with impairments, those persons enjoy the specific benefits and rights granted to that population, notably in the fields of education, employment, health and participation in political life.[62]

60. With respect to education, States continue to provide special schools for pupils with visual impairment, including persons with albinism, even though there is a move towards more inclusive education.[63] Other measures commonly provided by ministries of education include the provision of large-print material for national exams, visits of specially trained teachers and, less often, the provision of free low vision optical devices in educational institutions. In Malawi, the Montfort Special Needs Education College trains teachers on the specific requirements of persons with albinism.

61. Concerning access to employment, respondent States reported several positive measures for promoting access to employment and other income-generating

[55] A/71/255.

[56] See resolution 69/170.

[57] See Human Rights Council resolution 28/6.

[58] Among ongoing projects, it is worth mentioning UNICEF programmes in the Democratic Republic of the Congo, Mozambique and the United Republic of Tanzania; the World Bank support for a research project on albinism in the United Republic of Tanzania; and the community awareness-raising pilot project by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in the United Republic of Tanzania.

[59] See: www.achpr.org/sessions/60th/resolutions/373/.

[60] In Kenya, the Government has, for example, adopted a national persons with albinism sunscreen support programme.

[61] In Brunei Darussalam, albinism is considered a medical condition. In Zimbabwe, a legal framework for persons with disabilities exists, but it does not include persons with albinism. In Benin, the legal framework for persons with disabilities is deficient.

[62] Some countries, including Kenya, also help persons with albinism to prevent premature death from diseases related to sun exposure by raising awareness and providing sunscreen lotion.

[63] Three of the respondent States stressed the recent adoption of inclusive education policies.

activities for persons with disabilities, including employer quotas, tax breaks, subsidies, preference in public procurement and the creation of accessible Internet job portals.

62. Only a few States reported specific measures facilitating access to health services for persons with albinism. In the United Republic of Tanzania, the Government has recently introduced a cost-sharing policy according to which under resourced persons share the treatment cost with public referral hospitals. This policy is expected to benefit impoverished persons with albinism.

63. Although several States reported having parliamentary quotas for persons with disabilities, this does not ensure that persons with albinism would be present in a parliament, as they would compete with persons with other disabilities.

64. Other initiatives include public awareness campaigns on albinism in the mass media, the distribution of informative leaflets and the celebration of Albinism Awareness Day.

65. States do not usually produce nationwide statistics about persons with albinism. Among the respondent States, Cameroon and the United Republic of Tanzania produce disaggregated data from the national population census on persons with albinism. This idea is under discussion in other States.

C. Responses by civil society organizations

66. Civil society organizations representing persons with albinism are present in most countries. The type and range of activities undertaken by them depend largely on the situation of persons with albinism in their respective countries and the capacity of the State to provide the required accommodations. Civil society organizations are especially important in sub-Saharan Africa. In this region, their main activities include awareness-raising campaigns,[64] service provision[65] and State lobbying.[66]

V. Conclusions and recommendations

67. **Persons with albinism continue to face discrimination and barriers that prevent them from participating fully in economic, social, political and cultural life. The promise of the 2030 Agenda to "leave no one behind" creates new urgency to improve the terms of participation of persons with albinism in society and ensure that they benefit from prosperity and enjoy minimum standards of well-being. To translate this promise into genuine changes for persons with albinism, five pillars of action are critical:**

[64] The Association nationale des albinos de Côte d'Ivoire, the Zimbabwe Albino Association and the Site for Community Services Program in Uganda reported general awareness-raising activities on albinism. Valeur Albino from Benin and the Association nationale des albinos du Togo reported targeted awareness-raising activities on the risks of skin cancer.

[65] In the United Republic of Tanzania, Standing Voice provides skin cancer prevention services and optometry services through its skin cancer prevention programme and vision programme. The Regional Dermatology Training Centre of the Kilimanjaro Christian Medical College operates a comprehensive care programme for persons with albinism since 1993 and has recently entered into a partnership with UNICEF to expand its activities. The Albino Association of Malawi also has a good record of registering individuals with albinism, providing them with counselling on skin protection, fighting for their rights and raising community awareness.

[66] The Association of People with Albinism in Malawi reported that it advocated the integration of persons with albinism into the national population census.

(a) **Recognizing the multiple and intersecting forms of discrimination faced by persons with albinism, notably on the grounds of disability, colour, gender, race and age, and taking steps to combat them;**

(b) **Disseminating information and raising awareness about the situation of persons with albinism;**

(c) **Taking specific inclusionary measures to enhance access to services (education and health, among other services) and access to material resources (employment and income opportunities) for persons with albinism;**

(d) **Ensuring the participation of persons with albinism in social, political, civic and cultural life;**

(e) **Collecting, compiling and disseminating data on persons with albinism in order to identify patterns of discrimination and assess progress toward the attainment of the Sustainable Development Goals.**

A. Member States

68. **It is recommended that Member States:**

(a) **Invest in the social development of their people, in particular persons with albinism. States that have been experiencing significant economic growth should target inequality with a view to guaranteeing social development for persons with albinism and the larger public;**

(b) **Address the root causes of discrimination against persons with albinism, notably through awareness-raising campaigns that disseminate accurate information on albinism, the integration of albinism into education curricula, the promotion of persons with albinism as role models and the support to civil society organizations involved in awareness-raising activities. Awareness-raising campaigns should engage with people at the community level and be adapted to local sociocultural contexts. Persons with albinism should be involved in the design of these campaigns;**

(c) **Adopt national action plans and legislation on the rights of persons with albinism, in consultation with civil society organizations representing persons with albinism and in conformity with international human rights standards, notably the Convention on the Rights of Persons with Disabilities and the International Convention on the Elimination of All Forms of Racial Discrimination;**

(d) **Adopt measures to ensure the systematic dissemination of information on albinism to parents, educators and support-givers of children with albinism;**

(e) **Collect, compile and disseminate data on persons with albinism to identify patterns of discrimination and assess progress towards the attainment of the Sustainable Development Goals, in particular by including the variable of persons with albinism in the national population censuses and by ensuring mandatory registration of birth and deaths of persons with albinism. The collected data should be disaggregated, at least by age and sex;**

(f) **Adopt measures to ensure the accessibility, availability, affordability and quality of dermatological and visual goods and services, notably by including sunscreen and skin cancer treatment products in national lists of essential medicines;**

(g) **Include persons with albinism in public health policies for skin cancer;**

(h) **For countries where dermatological and ophthalmological services are scarce: develop and/or support outreach programmes among persons with albinism, including mobile units for skin health and ophthalmological services; adopt measures to make first-necessity items (sunscreen, sun protective clothing, sunglasses and low vision devices) accessible and affordable, especially by distributing them through existing networks of health services and educational institutions; and increase the share of public health expenditure in total government expenditure to improve the availability of dermatological and ophthalmological services;**

(i) **Promote the inclusion of pupils with albinism in mainstream education by providing educational institutions with the adequate means to equip classrooms, provide supportive devices to pupils with albinism and train teachers on albinism and supportive measures that they can take to accommodate the needs of pupils with albinism;**

(j) **Adopt and ensure the effective implementation of positive measures to promote employment and access to income-generating activities for persons with albinism;**

(k) **Ensure accessibility to social protection and poverty reduction programmes for persons with albinism;**

(l) **Support organizations representing persons with albinism and ensure their participation in all decisions and measures taken for the full implementation and enjoyment of the rights of persons with albinism;**

(m) **Adopt and ensure the implementation of so that persons with albinism enjoy access to justice, including by having appropriate remedies and redress;**

(n) **Enforce criminal laws that allow prosecution and punishment of attacks, mutilations, killings and other severe human rights violations, by establishing more severe criminal punishment when these acts are committed on the basis of discrimination, in particular when targeting persons with albinism;**

(o) **Combat stereotypical, belittling and negative characterizations of persons with albinism in the mass media and the arts, with due regard to the right to freedom of expression.**

B. International community

69. **It is recommended that the international community:**

(a) **Provide financial and technical cooperation assistance to States in support of measures that seek to prevent and combat discrimination against persons with albinism, strengthen the capacity of the health-care system in providing affordable dermatological and ophthalmological services, and strengthen the capacity of the educational system to include pupils with albinism;**

(b) **Provide financial and capacity-building assistance to civil society organizations working for the promotion and protection of the rights of persons with albinism and for the general improvement of their life conditions;**

(c) Support research projects on human rights abuses and social development challenges faced by persons with albinism;

(d) Ensure that the high-level political forum on Sustainable Development and Member States give due consideration to the social development challenges of persons with albinism in the implementation of and follow-up to the Sustainable Development Goals.

C. Civil society organizations

70. **It is recommended that civil society organizations:**

(a) Address the root causes of discrimination of persons with albinism, notably through awareness-raising campaigns;

(b) Develop programmes to provide services and information to persons with albinism, especially in places where these services are lacking;

(c) Lobby States on issues related to the human rights situation of persons with albinism and the barriers that they face in terms of social development.

D. The private sector

71. **It is recommended that the private sector:**

(a) Adopt good practices and policies against discrimination in order to ensure that persons with albinism are treated on an equal basis as other persons, especially in terms of recruitment, work conditions and opportunities and access to loans;

(b) Provide reasonable accommodation for the needs of persons with albinism in the workplace;

(c) Avoid putting persons with albinism in situations that may be harmful to them in the course of their business activities.

E. The media and arts

72. **It is recommended that media companies adopt a responsible, educational and do-no-harm editorial policy with regard to persons with albinism and promote tolerance and understanding of albinism.**

United Nations A/72/170

General Assembly

Distr.: General
19 July 2017

Original: English

Seventy-second session
Item 73 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Situation of human rights defenders

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights defenders, Michel Forst, in accordance with Assembly resolutions 66/164 and 68/181 and Human Rights Council resolutions 16/5 and 25/18.

* A/72/150.

17-12218 (E) 250817

Please recycle

Report of the Special Rapporteur on the situation of human rights defenders

Summary

Notwithstanding the endorsement by the Human Rights Council of the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex), there continues to be a worrying lack of accountability for the adverse human rights impacts of business activities. While human rights defenders seek to expose human rights abuses and actively contribute to sustainable and positive changes, they face a growing number of attacks from States and business-related actors. The Special Rapporteur urges States, business enterprises and investors to fulfil their obligation to respect and protect human rights defenders and to recognize and promote the shared interest of all actors in free, open and enabling environments that uphold human rights and the rule of law. New approaches are needed to tackle the situation and ensure that both preventive and reactive measures are adopted and implemented.

Contents

		Page
I.	Introduction	3
II.	Methodology	4
III.	Who are the human rights defenders working on business and human rights?	5
IV.	Normative framework	7
V.	Key stakeholders — obligations, challenges and good practices	9
	A. States	9
	B. Business enterprises	14
	C. Investors	18
VI.	Conclusions and recommendations	20
	A. Conclusions	20
	B. Recommendations	21

I. Introduction

1. The work of human rights defenders in the field of business and human rights is crucial to protecting the land and the environment, securing just and safe conditions of work, combating corruption, respecting indigenous cultures and rights and achieving sustainable development.

2. The work of human rights defenders is also crucial to protecting the rights of freedom of expression and association, promoting gender equality and diversity and upholding the rule of law, conditions which are indispensable to the creation of an environment conducive to optimal working conditions for both business and civil society.

3. However, defending and promoting human rights in the context of business is dangerous, and even deadly, work. For defending human rights over profit, privilege and prejudice, ordinary people, communities, workers and trade unionists face stigmatization, criminalization, physical attacks and sometimes death. In many situations, such courageous people are being deprived of their most fundamental rights for the mere fact of their having opposed powerful interests. The Special Rapporteur is deeply concerned that these defenders are suffering attacks by business actors overpowering and silencing them, which exerts a chilling effect on their work. This worrying trend is compounded by a lack of State action in response to such attacks. This applies to States on whose territory attacks occur, as well as to the home States of the business entities involved in the attacks.

4. In his report to the General Assembly in 2015 (A/70/217), the Special Rapporteur identified defenders working on the issue of business and human rights as one of the most vulnerable groups of defenders and highlighted that business interests are often one of the key challenges they faced on the ground. In his previous report, in which he focused on the situation of environmental human rights defenders (A/71/281), the Rapporteur noted with concern the complicity of companies and business actors in various human rights violations against defenders and communities working to protect fundamental rights and freedoms.

5. In 2015 and 2016 alone, 450 such attacks were documented across the world. Of those attacks, 25 per cent were connected to companies headquartered in three countries only: Canada, China and the United States of America. This alarmingly high number is only the tip of the iceberg.[1] The real number of attacks is likely to be significantly higher for several reasons, including that, out of fear of retaliation, an increasing number of defenders refrain from reporting attacks. As more businesses, in particular those encroaching on the lands of indigenous peoples or other groups that have not agreed to their activities, are expanding their activities to remote and inaccessible areas, affected communities and individuals routinely find that they have few opportunities to draw attention to the threats they face for opposing such activities. Perhaps most significantly, the complexity of corporate structures in the globalized economy has created a number of layers and barriers to accessing information about business enterprises and their supply chains, making it challenging to reveal the links or operational connections between the business enterprises and the attacks. The attacks take place against a backdrop in which business enterprises already have significant influence over States and ensure that regulations, policies and investment agreements are framed in a way that promotes the profitability of their business, often to the detriment of human rights. Concomitant to this is the growing trend among States to adopt legislation curtailing the activities of civil society organizations.

[1] Business and Human Rights Resource Centre submission for the present report (June 2017).

6. In his thematic report to the Human Rights Council, the Special Rapporteur noted with apprehension that such legislation was in effect in 90 States and that an even higher number had taken measures to restrict freedoms of expression and opinion, peaceful assembly and association (A/HRC/31/55, para. 28). In July 2017, the number of States in which action had been taken to restrict the activities of civil society reached a record 106, which is more than half the number of States Members of the United Nations.[2] That combination — the excessive favouring of business interests and the increasing crackdowns on civil society — erodes social, political and economic stability and has a far-reaching impact, not only for defenders but for business enterprises and their ability to invest.[3]

II. Methodology

7. The Special Rapporteur engaged in consultations with defenders, Governments, business enterprises, investors, intergovernmental organizations and national human rights institutions to seek their perspectives on the various dimensions of the issue of defenders working on business and human rights. A questionnaire distributed to a broad range of stakeholders generated a large number of responses. Two consultations with defenders were hosted, in Geneva (17 May 2017) and Brussels (23 June 2017), followed by a meeting of experts, held in Geneva (4 July 2017). In Washington, D.C., the Rapporteur met with representatives of major international development banks and civil society working to address violations linked to the activities of such institutions.

8. The Special Rapporteur has also engaged directly with companies and their "home" and "host" States over alleged threats to human rights defenders, through a series of communications. He had the opportunity to engage with authorities during some of his working visits to Australia, Canada, Honduras and Mexico.

9. The Special Rapporteur expresses his gratitude to the many human rights defenders that have taken extraordinary risks to share their testimonies in the preparation of the present report. He also thanks States, business enterprises, investors and national human rights institutions for their submissions and is grateful for the assistance and instrumental support provided by the Centre for Applied Human Rights at the University of York.

10. Over the past 10 years, the Special Rapporteur mandate holder has sent 3,918 communications, of which approximately 105 (2.7 per cent) directly concerned defenders working in the context of business. Alleged perpetrators have included State (police and others) and non-State (transnational companies, private security firms, organized crime groups) actors. Most of those communications (over 51) were sent to Governments or companies owned or operating in the Americas, around 24 to parties in Asia, 8 to Europe and Central Asia, 6 to Africa and 4 to the Middle East and North Africa. Activities conducted by defenders occurred mostly within the electric power and other energy sectors and, in cases involving extractive and other industries operating within communities, often entire communities of several hundred to 20,000 persons were affected. About 28 per cent of the affected defenders were women and most of the violations referred to killings and attempted assassinations, followed by judicial harassment, intimidations and threats.

11. The Special Rapporteur intends to increase the number of communications addressed to companies in the coming months.

[2] See CIVICUS, *State of Civil Society Watch Report*, June 2017.
[3] World Economic Forum, *The Global Risks Report 2017*, p. 29.

III. Who are the human rights defenders working on business and human rights?

12. The term human rights defender refers to individuals or groups that, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights.[4] Defenders are, above all, identified by what they do and characterized by the actions they take to protect human rights. Their right to exercise such fundamental rights and freedoms as the right to peaceful assembly and association, the right to participate in public affairs, and the freedom of expression and opinion are firmly anchored in the international system of human rights.

13. The Special Rapporteur adopts a broad and inclusive definition of defenders working on business and human rights, including affected communities and individuals, members of the media, lawyers, judges and academics. Defenders working on business and human rights may also be government officials and civil servants or members of the private sector, including company employees such as trade unionists and whistle-blowers. Human rights defenders are often ordinary people living in remote areas, who may not even be aware that they are acting as human rights defenders (A/71/281, para. 8). What members of this broad and diverse group have in common is the exercise of peaceful activities to address adverse business-related human rights impacts and seeking remedy.

14. Human rights defenders play a critical role in fostering corporate respect for human rights. Through their work, they can help to bring to the attention of States and business enterprises business-related impacts on human rights, address inconsistencies in the domestic legal and policy frameworks that may contribute to such impacts and support affected communities and individuals in seeking remedy where adverse human rights impacts have occurred.

15. Their important work notwithstanding, defenders are increasingly subject to attacks by States and business-enterprises. Such attacks have taken place in all sectors and all regions. Based on the 450 cases documented by the Business and Human Rights Resource Centre in 2015 and 2016,[5] the most common form of attack is criminalization, followed by killings, intimidation and threats.[6] More than 52 per cent of the documented attacks took place in Latin America: Guatemala (10 per cent), Colombia (10 per cent), Mexico (9 per cent), Brazil (9 per cent), Peru (8 per cent) and Honduras (6 per cent).[7]

16. Companies belonging to land-consuming industries, such as mining, agribusiness, oil, gas and coal and dam construction, remain the most dangerous for defenders (see A/71/281). However, defenders working to address human rights violations in other sectors, such as finance, information and communications technology and garment manufacturing, are not immune to threats and retaliation. Attacks have been reported in all sectors and regions, and the Special Rapporteur continues to receive credible allegations about many attacks against defenders that have sought to address human rights violations relating to taxation and corruption.

17. The Special Rapporteur was appalled by the high number of attacks and threats facing defenders on the ground. Judicial harassment and criminalization are among the most common forms of attacks to silence opposition to business-related

[4] See General Assembly resolution 53/144 on the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

[5] Business and Human Rights Resource Centre submission to the present report (June 2017).

[6] Ibid.

[7] Ibid.

projects. Many testimonies unveiled the complicity of States, which tended to pursue cases brought by businesses against human rights defenders while ignoring cases reported by defenders against businesses, highlighting the economic and political power imbalance between corporate actors and affected communities whose members often struggle to dedicate resources, time and energy to unjust trials.

18. Killings and physical attacks disproportionately affect those engaged in the defence and promotion of environmental rights.[8] According to the most recent report of Global Witness, at least 200 land and environmental rights defenders were murdered in 2016.[9] Companies have been reportedly using State forces, private security groups or organized crime to defend locations of economic interest and target human rights defenders. The Special Rapporteur is extremely concerned by the growing tendency worldwide for public forces to have a dual functionality. Memorandums of understanding between companies and police forces often contribute to the blurring of limits between public and private security, a situation in which the police become the asset of private interests and fail to protect local communities. Some of the specific constraints faced by defenders working in the sphere of business include the immense disproportionality between the legal, logistical, defensive and financial resources available to defenders compared with those of companies. Defenders also fall victim to a "divide and rule" policy, whereby companies use coercive methods that turn workers against one another by creating tensions within the workforce and turn local communities, groups and trade union members against the very defenders who are defending their rights. Companies achieve this by offering, inter alia, financial and other economic incentives and promises of job security and economic well-being and by claiming that the defenders wish to deprive them of this. In the long-term, such strategies result in the gradual deterioration of the social fabric of entire communities.

19. Women human rights defenders are particularly at risk when leading the opposition to companies and reporting human rights abuses. They are targeted both as human rights defenders but also because they are women. Women human rights defenders are often at the forefront of human rights battles, partly because they are directly affected by human rights violations and because they challenge companies' power and deeply rooted patriarchy. In a recent report on women confronting extractive industries, the Association for Women's Rights in Development highlighted the threats, risks and violence, including criminalization, stigmatization, sexual abuse, intimidation, smear campaigns and reprisals faced by women human rights defenders as a result of their human rights commitment and their gender identity.[10] The threats faced by women are often extended to their families. Companies encroach upon the well-being and livelihoods of the families of women human rights defenders and members of their communities and their neighbourhoods and exploit traditional gender roles in communities through intimidation — often by bribing and sending mostly male workers to their female colleagues' homes — and limiting their public participation in the defence of human rights.

20. Human rights defenders from indigenous communities and rural and isolated areas are also targeted when they have documented abuses by companies or another company in the relevant supply chains, including suppliers, manufacturers and retailers. In many cases, their advocacy is a direct consequence of attacks led

[8] Global Witness, *Defenders of the Earth: Global killings and environmental defenders in 2016*.

[9] Ibid.

[10] Association for Women's Rights in Development, "Women human rights defenders confronting extractive industries". Available from www.awid.org/publications/women-human-rights-defenders-confronting-extractive-industries.

against their very livelihood. Owing to geographical isolation or lack of political and economic capital or because they belong to groups that have suffered social marginalization, these defenders can be more vulnerable to threats and attacks. Perpetrators also develop a range of actions that often seek to disarticulate collective struggles through "divide and rule" strategies, which can be particularly difficult for indigenous defenders, who may not be proficient in the official State language of the country in which they live and, in some cases, may not even be in possession of identity documents. This creates additional layers of oppression whereby indigenous defenders find it more difficult to articulate their rights, because they do not have a proper legal status in their countries. Other testimonies of defenders and civil society organizations highlight the growing tensions between local communities and companies' employees who accuse human rights defenders of being a threat to the protection of their work.

21. The extended study of the cases that have been submitted to the Special Rapporteur mandate holder provide evidence that there is a profound crisis linked to the imposition of models of development that seem to favour short-term profits and commodification over the needs and aspirations of local populations. Conflicts around labour rights, land grabbing or the exploitation of natural resources are doomed to worsen if there is no reassessment of economic and development models that deprive entire communities of their fundamental rights. Pitted against the dominant model of development, defenders are increasingly under pressure for denouncing corporate abuses and proposing alternative economic and development models; this pressure often takes the form of narratives that portray them as "anti-development". These narratives, disseminated through State-owned media and social networks, often reveal the lack of understanding of the positive role that human rights defenders play in safeguarding democratic values and stability.

22. Governments and businesses could prevent many of the threats and attacks against defenders, if they were to do more to recognize the legitimacy and utility of free expression and dissent and to guarantee the meaningful participation of civil society stakeholders in decisions relating to business which affect them.

23. This analysis is particularly true for land and environmental defenders, where the roots of conflict are often found in the exclusion of potentially affected communities from decisions regarding their land and natural resources. Only by guaranteeing the right of such communities to give or withhold their free, prior and informed consent, as foreseen in international agreements, can these origins of conflict be avoided. Unfortunately, consultations about business projects often take place only once key decisions have already been taken and are used simply to stage "approval". In addition, false documentation is sometimes used to illegally dispossess defenders of their land, which facilitates the selling of the land to businesses.

IV. Normative framework

24. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms is addressed not only to States and human rights defenders but to all "individuals, groups and organs of society". In article 10 of the Declaration, it is clearly stated that "no one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms". Therefore, non-State actors, such as companies, are included in its scope setting out the responsibility to promote and respect the rights of defenders.

25. It is well established that business enterprises can have significant impact on the enjoyment of human rights, and global trade and investment can serve as an important vehicle to economic growth, which, if not skewed to favour the few, can provide financial means for the fulfilment of human rights. Companies can, and do, infringe on human rights, in cases where, willingly or unwillingly, they have not paid attention to the actual or potential risks their activities can have on human rights.

26. In recognition of these risks, and in an effort to address the regulatory gap between corporate influence and accountability, the Human Rights Council endorsed the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex) in June 2011.

27. The Guiding Principles rest on three distinct but mutually reinforcing pillars: the duty of States to protect their citizens from human rights abuses by third parties, an independent corporate responsibility to respect human rights, and the need for greater access for victims of business-related abuse to effective remedy. The Principles apply to "all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure" (ibid., General principles).

28. It is recognized in the Guiding Principles that defenders play an important role as watchdogs, advocates and facilitators and the heightened risks that they may face as a result. Principle 18 clarifies that companies should consult human rights defenders as an important expert resource, and the commentary to Principle 26[11] specifies that States should ensure that the legitimate activities of defenders are not obstructed.

29. International organizations, Governments and business enterprises have drawn extensively from the Guiding Principles in their standard-setting and related guidance. They were incorporated in the 2011 revision of the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises and reflected in the revisions to the International Labour Organization Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, which provides a key international reference for ensuring respect for labour rights across the operations of transnational businesses. A number of countries have passed legislation requiring companies domiciled in their territory and/or jurisdiction to identify and prevent infringements on human rights. Similarly, States have issued national action plans, or have committed to doing so, with a view to giving practical effect to the Guiding Principles.[12]

30. Although the Special Rapporteur is encouraged by these initiatives, the reality on the ground paints a troublesome picture. Defenders operate in ever more hostile environments and are subjected to an increasing number of attacks, often carried out or condoned by State actors and vested business enterprises. It is of particular concern that, of the initiatives the Rapporteur has come across, most, if not all, do not consistently seek to address the situation of defenders or how to ensure their protection.

31. In recognition of this gap, recent initiatives have sought to address the situation of defenders working on business and human rights. Civil society organizations have highlighted trends and challenges they face on the ground. The

[11] Special Rapporteur on the situation of human rights defenders, "Commentary to the Declaration on human rights defenders" (2011). Available from www.ohchr.org/EN/Issues/SRHRDefenders/Pages/CommentarytotheDeclarationonHumanRightsDefenders.aspx.

[12] The Special Rapporteur's observations on national action plans are elaborated in an addendum to a supplementary extended report on the subject.

Working Group on the issue of human rights and transnational corporations and other business enterprises, in consultation with the Special Rapporteur, has recently engaged in a project to develop guidelines for companies on better respecting human rights defenders.

32. At the international level, ongoing negotiations for a legally binding treaty on State and business conduct with regard to human rights may serve to close some of the gaps in consideration of defenders in the global and national policy responses to the Guiding Principles. The Special Rapporteur welcomes the initiative and considers it essential that defenders take part in this process. He calls upon States to facilitate their participation in the sessions of the open-ended working group and to consider in particular including defenders in their delegations. He invites the open-ended working group to host a dedicated session on the role of human rights defenders and how to best ensure their protection within the framework of the binding treaty.

V. Key stakeholders — obligations, challenges and good practices

A. States

Creating an enabling environment

33. States have a duty to protect human rights, including protecting against abuses by business enterprises and other third parties (A/HRC/17/31, Guiding Principle 1). To meet this duty, States should enforce laws that are aimed at, or that would have the effect of, requiring business enterprises to respect human rights (ibid., Guiding Principle 3 (a)). In doing so, States should clearly set the expectation that all businesses domiciled in their territory and/or jurisdiction should respect human rights (ibid., Guiding Principle 2). The State duty to protect, as noted by the Committee on Economic, Social and Cultural Rights, does not end at national borders.[13] Accordingly, States should regulate and monitor corporations across national borders to protect individuals and communities from the negative impacts of their activities.[14]

34. The State duty to protect against human rights abuses entails ensuring that defenders are not subjected to attacks from State actors or third parties for their activities. Respect and support for the work of defenders are essential to fulfilling the duty to protect and clearly setting the expectation that business enterprises — at home and elsewhere — should respect human rights. Discharging this duty requires that States foster an environment that is supportive of the human rights that are fundamental to the activities and safety of defenders, including the freedom of peaceful assembly and association and freedom of opinion and expression, and their right to protest, access funding and develop and discuss new human rights ideas, as well as their right to be protected and to effective remedy.[15] A key element of an enabling environment for defenders is the existence of laws and provisions at all levels that reflect these rights, that protect, support and empower defenders, and that are in compliance with international human rights law and standards (A/HRC/25/55, para. 62).

[13] Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities.

[14] Ibid.

[15] Special Rapporteur on the situation of human rights defenders, "Commentary to the Declaration on human rights defenders" (2011), p. 5.

35. The Special Rapporteur continues to find, across the globe, that regulatory frameworks are absent or deficient. He has continued to raise concerns about national laws that fall short of meeting international human rights standards, including: laws governing the registration, functioning and funding of associations; defamation and blasphemy legislation that stifles the freedom of expression and opinion; labour and employment laws restricting the activities of trade unions and the enjoyment of other fundamental rights at work; restrictions on access to information of public interest; laws relating to the Internet and other information and communications technology services; laws on public morale; and anti-terrorism and national security legislation.

36. A number of States have adopted laws that address the human rights impacts of business enterprises domiciled and/or under their jurisdiction. These laws cover either the full spectrum of human rights, such as the Duty of Care Law in France[16] and the Global Magnitsky Human Rights Accountability Act[17] and the Dodd-Frank Wall Street Reform and Consumer Protection Act[18] in the United States, or only partially, such as the Modern Slavery Act 2015 in the United Kingdom of Great Britain and Northern Ireland.[19]

37. The Special Rapporteur is encouraged by the adoption of laws that make human rights due diligence a legal requirement for companies and believes that these are likely to be more effective in addressing corporate conduct than voluntary reporting systems. As long as other laws, policies and agreements can be relied on to obstruct the work of defenders, however, such as laws facilitating strategic lawsuits against public participation, legislation seeking to regulate corporate human rights impacts will not be able to achieve its stated intent.

38. To evaluate the realistic possibilities that defenders have for addressing corporate human rights abuses, one point of departure is the question of access to information, a matter which has become highly contentious, with conflicting points of view about the scope of the State duty and the responsibility of the business to provide information about their operations and business relationships. The Special Rapporteur considers that effectively addressing human rights abuses caused by or linked to business enterprises is contingent upon access to information. He is deeply concerned at the many appeals of defenders indicating that obtaining information that is crucial for revealing direct links or operational connections between companies and violations remains a major challenge and that companies seek to block public access to information by arguing that doing so would force them to disclose trade secrets. The Special Rapporteur is concerned that the absence of legislation requiring companies to publicly disclose the origins of imported products makes it very difficult, if not impossible, to address the human rights abuses taking place at different tiers of the supply chain. Currently, information relating to trading parties that is disclosed is generally not made available to the public within the European Union, including in response to specific requests from defenders in cases in which there are well-founded reasons to suspect abuse of workers' rights.

39. States have a positive duty to facilitate a maximum level of public access to information, in particular when such information is necessary in order to unveil human rights violations. Although it is recognized in the International Covenant on Civil and Political Rights that there may be legitimate grounds for States to restrict

[16] France, Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre.

[17] United States, Global Magnitsky Human Rights Accountability Act (2016).

[18] United States, Dodd-Frank Wall Street Reform and Consumer Protection Act (2010).

[19] United Kingdom, Modern Slavery Act 2015.

freedom of expression,[20] the Human Rights Committee has emphasized that any limitations to public access to information must be applied in such a way that they do not jeopardize the right itself.[21] Certain matters should be presumed to be in the public interest, including human rights violations and corruption (A/70/361, para. 10).

40. For State decisions to be legitimate, they should be reached through democratic processes in which the interests of the public are well represented. Consultation with defenders is crucial. However, the lack of adequate implementation of the State duty to consult is one of the most frequently reported challenges, in particular in cases of decisions relating to trade and finance, such as negotiations over investment treaties or lucrative deals sealed with business enterprises that are likely to have far-reaching impacts on human rights. Excluding defenders from such consultations manifests not only a gross deficit of democratic legitimacy, but also fails to appreciate the invaluable knowledge that they bring to the negotiating table, namely an understanding of human rights and how the decisions may undermine compliance with the relevant State's obligations.

Protecting defenders

41. The protective thrust of the Guiding Principles is that States should take appropriate steps to prevent, investigate, punish and redress human rights abuses. The State duty to protect is also reflected in the Declaration on human rights defenders.

42. The Special Rapporteur continues to receive credible allegations that State and non-State actors, including business enterprises and associated private security forces, are involved in subjecting defenders to stigmatization and judicial and other forms of harassment. Such stigmatization makes defenders more vulnerable to attacks, not only by State actors but also by business enterprises and associated actors. States should publicly acknowledge the importance of the work of defenders and clearly communicate to the business community that attacks against defenders will not be tolerated. The Special Rapporteur notes with appreciation that, in Canada, the recently adopted national guidelines on human rights defenders recognize that Canadian business enterprises have an important role to play with respect to human rights defenders at home and abroad.[22]

43. In many cases, a growing number of defenders that have sought to address labour rights violations, corruption, lack of transparency and other issues pertinent to business and human rights have been charged with and jailed for a range of criminal offences, including "misleading propaganda", "infringement of State security" and "public unrest". Similarly, an increasing number of business enterprises are pursuing retaliatory lawsuits, commonly under the guise of strategic lawsuits against public participation, against defenders. Such harassment takes a substantial financial and psychological toll on defenders and has a chilling effect, ultimately undermining their capacity and willingness to bring human rights abuses to light. Moreover, defenders are often denied access to State legal aid when confronted with fending off lengthy and costly lawsuits.

44. Judicial harassment against defenders is facilitated by State judicial mechanisms in both home and host States and, as such, it occurs with State complicity or disregard. The Human Rights Committee, in its general comment

[20] International Covenant on Civil and Political Rights, article 19 (3).

[21] Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 21.

[22] Canada, "Voices at risk: guidelines on supporting human rights defenders". Available from http://international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng.

No. 34 (2011) on the freedoms of opinion and expression, called upon States to be proactive in putting into place "effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression" and highlighted that restrictions on freedom of expression and opinion may never be invoked as a justification for the muzzling of any advocacy of democratic tenets and human rights.[23]

45. Systematic inadequacies in ensuring the protection of defenders working on business and human rights also continue to be reported from across the globe. Ill-designed or poorly implemented State protection systems, or a complete lack of protection mechanisms, have led to an alarming situation in which many defenders find themselves with no protection at all. Many reports contain descriptions of the magnitude of attacks that defenders are subject to when seeking access to grievance mechanisms or supporting investigations conducted by such mechanisms, including those associated with international financial institutions.

46. Regrettably, the corporate capture of State authorities appears to compound the inadequate protection of defenders in many parts of the world. Corporate capture has entailed relying on State forces, such as the gendarmerie, to "defend" sites of economic significance from protests, typically mobilized by the State to defend the promise of financial gains from investments. Further research is needed to assess the factors that influence the effectiveness of national protection mechanisms and to analyse how defenders can work with States to develop these mechanisms, in particular in contexts where business entities are the main perpetrators of abuses. Laws and policies aiming at the recognition and protection of defenders should contain specific provisions to protect defenders who challenge businesses. States should work with defenders to define protective measures that could have a specific impact upon business.

Ensuring access to effective remedy

47. Ensuring access to effective remedy for victims is a central part of the State duty to protect (A/HRC/17/31, annex, Guiding Principles 25-31). Defenders seeking to obtain remedy continue to face multiple challenges, including fragmented, poorly designed or incomplete legal regimes; lack of legal development; lack of awareness of the scope and operation of regimes; structural complexities within business enterprises; problems in gaining access to sufficient funding for private law claims; and lack of enforcement (A/HRC/32/19, para. 4); as well as the significant influence that companies are reported to exercise over the judicial process.

48. Particular concern has been expressed to the Special Rapporteur regarding the national contact points in States that adhere to the OECD Guidelines for Multinational Enterprises. Accordingly, a significant number of national contact points are non-functional and, where they exist, have not been able to deliver remedy to victims or ensure their safety throughout the process. Compounding the problem is a lack of understanding by national contact points of the Guidelines and of business and human rights more generally. The absence of clear guidelines on how to ensure the safety of potential complainants has also put defenders at significant risk. The Rapporteur invites adhering States to review the effectiveness of their national contact points, in close consultation with defenders. He will continue to monitor developments in this regard and looks forward to the forthcoming peer reviews of several national contact points.

49. Challenges in seeking effective remedy are further exacerbated in cross-border cases, a situation which is most worrisome considering that extraterritorial avenues

[23] Human Rights Committee, general comment No. 34, para. 23.

are often the only option for defenders seeking remedy for corporate human rights abuses, given that many domestic legal regimes are geared towards business activities and impacts within their territory (A/HRC/32/19, para. 5). Extraterritorial judicial proceedings against companies are lengthy, costly and rife with obstacles, including common restrictions by courts in countries where the companies subject to the lawsuits are headquartered. Taken together, these challenges have led to a situation in which defenders rarely have access to effective redress mechanisms or, when they do, accountability and remedy is elusive.

50. For States to ensure effective remedy, the first step is to promptly and impartially investigate attacks against defenders. This aspect appears to be largely challenged or grossly ignored. The close relationships between private companies and organized crime and the fact that business activities, in particular in the mining, agribusiness, logging, oil and gas extraction and transportation sectors, often take place in conflict-affected areas pose challenges to the effective investigation of killings of defenders and the punishment of perpetrators.

51. Combating impunity implies conducting serious, independent and transparent investigations to identify and prosecute perpetrators and to ensure that adequate reparations are made. Although the primary responsibility to investigate attacks against defenders rests upon the State in which the attacks were carried out, the home States of companies also have an important role to play, in particular where the host State is unable, or unwilling, to investigate the attacks. Where attacks have been carried out against defenders in host States, home States should use all avenues possible to advocate for an independent, impartial and transparent investigation and should provide financial and technical support to such an investigation.

52. Many defenders also point to the high degree of impunity for perpetrators and States' reluctance to investigate attacks, let alone sanction the actors that have committed them. The failure to take action, through penalties or sanctions, demonstrates serious disregard for the work and safety of defenders and human rights broadly. Far too often, States are quick to punish defenders for revealing corporate abuse, but are unwilling to investigate, prosecute and punish business enterprises for committing serious, often violent, attacks against defenders. Some Governments have enacted policies or national action plans on business and human rights that establish links between an individual company's record of conducting human rights due diligence and the granting of government instruments of foreign trade and investment promotion,[24] mirroring the option provided by the Guiding Principles with regard to businesses operating in conflict-affected areas. Such financial sanctions should be imposed on companies whose track records show that they have been linked to attacks against defenders and have shown unwillingness to cooperate to address the situation. A prerequisite for applying this type of financial consequence is that the State can investigate the company and its activities, for example by mandating the State's official representation to investigate and regularly report to relevant authorities in the home State.

53. Recent legal developments may also serve to increase access to remedy for defenders working on business and human rights. For example, States have increasingly relied on criminal law to hold companies to account for criminal acts,[25]

[24] Germany, "National action plan on business and human rights" (December 2016).

[25] For example, the United Kingdom (DJ Houghton lawsuit (concerning the trafficking of Lithuanian migrants)); France (Amesys lawsuit (concerning Libya)); Auchan lawsuit (concerning garment factories in Bangladesh)); Germany (Danzer Group and SIFORCO lawsuit (concerning the Democratic Republic of the Congo)); Lahmeyer lawsuit (concerning a dam construction in northern Sudan)); Switzerland (Nestlé lawsuit (concerning Colombia)); and Qatar (Villaggio Mall lawsuit (concerning a fatal fire)).

and courts in some jurisdictions have progressed to hear civil claims over the responsibility of companies for abuses against defenders.[26]

B. Business enterprises

54. Attacks against defenders are committed on a daily basis by business enterprises (see A/65/223). More often, however, business enterprises are linked to attacks by virtue of their business relationships. Whether the link is direct or indirect, all business enterprises have an independent responsibility to ensure that defenders can effectively and safely address the human rights impacts linked to their operations.

55. The responsibility of a business to respect human rights is affirmed in the Guiding Principles and the Declaration on human rights defenders (A/HRC/17/31, annex, Guiding Principle 10). This responsibility means acting with due diligence to avoid infringing on the rights of others and to address adverse impacts linked to the company's own business activities and its business relationships. It exists independently of a State's abilities and willingness to fulfil its own human rights obligations and over and above compliance with national laws and regulations protecting human rights.[27] The Guiding Principles apply to all businesses, regardless of their size, sector, location, ownership and the geographic scope of their activities, and they apply in all situations (A/HRC/17/31, annex, General Principles). Since their adoption in 2011, the Guiding Principles have gained significant traction in the business community.

56. The rise of companies from non-OECD economies as investors and capital exporters has been cause for significant concern to defenders working on business and human rights. While such investment brings with it numerous potential benefits, it also comes with risks to human rights. Many companies headquartered in, or under the jurisdiction of, non-OECD countries have neither joined international initiatives for corporate social responsibility nor been put to the test of corporate accountability. Cognizant of social and environmental risk, these companies have begun to adopt environmental and social policies and guidelines for their overseas investments, which correspond to the Guiding Principles to varying degrees. However, many of these policies and guidelines are not well publicized, and the extent to which they are followed is unknown. How companies from these countries view and engage with defenders is also largely influenced by their domestic contexts, where meaningful civil society engagement is regrettably more the exception than the norm.

A positive duty: fostering a safe and enabling environment for defenders

57. Business enterprises also have an important role to play in ensuring an enabling environment for defenders. Through their business decisions, companies across virtually all sectors can undermine a safe and enabling environment for defenders. Such challenges have arisen when global corporate brands have made investment and sourcing decisions contributing to global pressures on producer prices and delivery times, resulting in downward pressure that has an impact on the

[26] Courts in Canada have heard cases such as Tahoe Resources lawsuit (concerning Guatemala); Nevsun lawsuit (concerning the Bisha mine in Eritrea); BP lawsuits (concerning Colombia); and Oil Palm Uganda lawsuit (concerning land grabs in Uganda). In May 2017, a counter-suit was presented against Natural Fruits in Thailand for its criminal proceedings against human rights defender Andy Hall.

[27] Special Rapporteur on the situation of human rights defenders, "Commentary to the Declaration on human rights defenders" (2011).

rights of workers participating in the chains. Similarly, in the information technology sector, telecommunications companies are responding to State requests for Internet shutdowns and surveillance, thereby potentially eroding the right to freedom of opinion and expression. Such acts, or neglecting to act, result in a rapidly deteriorating environment for defenders on a global scale.

58. The Special Rapporteur considers that the responsibility of businesses to respect human rights not only entails a negative duty to refrain from violating the rights of others, but also a positive obligation to support a safe and enabling environment for human rights defenders in the countries in which they are operating. Discharging this duty requires consultation with defenders in order to understand the issues at stake and the shortcomings that impede their work.

59. The human rights and business case for this positive duty is straightforward; if companies operate in an environment in which civic freedoms are under attack and dissent is routinely punished, then frank and open dialogue with stakeholders is no longer possible. As a result, due diligence will not be likely to reflect or address human rights risks and impacts, damaging not only affected communities but also the long-term sustainability of business activities. Successful conduct of business relies on stability — sound institutions, the smooth functioning of justice and public confidence in their personal safety. Such stability is hard to come by, if not impossible, when civil society is under attack and human rights are ignored. A functioning civil society hinges on respect for freedom of expression and association and free access to remedy and redress mechanisms and so does the business sector.[28]

60. Business enterprises should assess the status of civic freedoms and the situation of defenders and engage with host States regarding their findings. Through such engagement, authorities will be made aware of problems and that there is support from the business for introducing changes to strengthen the protection of defenders. A number of global companies across different sectors are already moving in that direction, such as through the Ranking Digital Rights initiative, in which several companies in the information and communications sector are working together with civil society to meet the global standards for respect for freedom of expression and privacy. Also in the information and communications technology sector, the company-led Telecommunications Industry Dialogue and the multi-stakeholder Global Network Initiative are seeking to find common ground for how to anticipate and respond to requests for Internet shutdown, including transparency on when and where such requests occur.

Human rights policy statements

61. In the Guiding Principles, business enterprises are encouraged to demonstrate their commitment to respect human rights through a statement of policy (A/HRC/17/31, annex, Guiding Principle 16). Although a growing number of companies have adopted human rights policy statements, few pay particular attention to the situation of defenders.

62. The adoption of a human rights policy statement is only a first step towards fostering corporate respect for human rights, but a policy statement on human rights defenders is an important component for embedding company responsibility to respect the rights of defenders and to ensure that business activities and relationships do not restrict, impair or otherwise interfere with their legitimate work.

[28] Lazala, Mauricio, "Civic rights are under attack. Here's why the business world should care", article prepared for the World Economic Forum on Latin America (27 March 2017).

63. To effectively satisfy the corporate responsibility to respect human rights, companies should ensure that their policy commitment on human rights reflects the role that defenders can play in bringing human rights issues to their attention and address the risks they face in so doing. A proactive commitment of this kind, whether contained in a stand-alone policy or integrated into a broader human rights strategy, should set the baseline expectation that the company will not seek to restrict, impair or otherwise interfere with the legitimate work of defenders and that threats, intimidation or physical and legal attacks against defenders will not be accepted. A statement of policy on defenders should be informed by internal and external expertise and be the result of a collaborative and open consultation with defenders (A/HRC/17/31, annex, Guiding Principle 16). It should be approved at the most senior level of the business enterprise and clearly communicated to all business partners with the requirement that they make the same commitment (ibid.).

Human rights due diligence

64. A key element of the Guiding Principles is the requirement for companies to conduct human rights due diligence through which business enterprises may be able to identify whether they are involved in actual or potential adverse impacts on human rights and human rights defenders and in what ways.

65. Understanding the context is a key part of effectively addressing human rights risks and impacts (A/HRC/17/31, annex, Guiding Principle 18). Guiding Principle 18 notes that the process of assessing adverse human rights impacts should draw upon human rights expertise. Defenders have valuable insight into how a company's products, operations and services enhance people's lives or harm people and whether the company's human rights policy and approach is working. They have a key role to play in the due diligence process and should be involved at all stages of it.

66. The corporate responsibility to respect defenders has an internal dimension, applying as it does to employees associated with the company, including whistle-blowers, and an external one, where impacts are felt and communicated by affected communities and individuals. While a growing number of companies are addressing the situation of defenders in their labour force, this is still an area for much improvement. As indicated in the Know the Chain ranking for 2016, the "worker voice" theme, which measures the extent to which companies proactively communicate with workers, enables freedom of association and ensures access to remedy, was rated among the lowest, in particular in the food and beverage and apparel and manufacturing industries.[29] A proper due diligence process should establish the requirements for respecting the rights of defenders and their safety and ensure that they are reflected in contractual codes.

Disengagement

67. The prospect and process of disengagement from a business relationship when serious human rights abuses are brought to light is a matter that both defenders and enterprises have raised as a major challenge. The Guiding Principles refer to disengagement, the process or act of withdrawing from a business relationship, as an option for addressing adverse human rights impacts,[30] however, key questions about when and how companies should consider terminating relationships and the possible further impacts that this may have on defenders remain unanswered.

[29] See the Know the Chain benchmarks for 2016. Available from https://knowthechain.org/benchmarks.

[30] Special Rapporteur on the situation of human rights defenders, "Commentary to the Declaration on human rights defenders" (2011), commentary to Guiding Principle 19.

68. Defenders express concern that the usual response by companies when issues in their supply chains surface is to disengage, but just moving on to the next supplier can be very harmful to defenders and the communities that they are trying to support and empower. Part of the problem appears to be that business enterprises do not sufficiently employ the prospect of disengagement at an early stage of the business relationship, which reduces their ability to effectively address adverse impacts through leverage over business partners when problems emerge.[31] Having the prospect of disengagement on the table from the beginning of, and throughout, the business relationship can potentially increase the company's chances of successfully addressing adverse impacts without having to completely disengage from the relationship. As with the entire due diligence process, defenders should be meaningfully involved in the decision-making process around disengagement.

69. A related question is that of company responsibility for remediating adverse human rights impacts and supporting defenders after it has disengaged. It is affirmed in the Guiding Principles that if a company contributes to an adverse impact, it is responsible for remediating the impact to the extent of its contribution (A/HRC/17/31, annex, Guiding Principle 22). The Special Rapporteur considers that the company's responsibility to remediate impacts to which it contributed remains even if the company disengages from the relationship through which it contributed to the impact. The responsibility for working with defenders to address any outstanding issues and ensuring their security while doing so does not automatically end when the business relationship does.

Access to remedy

70. Access to remedy for defenders hinges on companies' taking responsibility for acts or omissions that lead to human rights violations. Regrettably, assuming responsibility seems rarely to occur. The Special Rapporteur continues to receive credible allegations that companies are refusing to cooperate with proceedings of judicial and non-judicial grievance mechanisms and, what is more, are engaging in retaliatory lawsuits against defenders for having unveiled corporate human rights abuses.

71. Guiding Principle 22 establishes that, where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes. To facilitate remedy, the company should have in place agreed processes for the remediation of adverse human rights impacts arising in any area of operations (A/HRC/17/31, annex). In certain cases, it may not be appropriate for remediation to be provided by the enterprise, including where this is not desired by affected communities and individuals; in others, the company will not recognize its liability. In such instances, defenders have often sought to access other State-based judicial or non-judicial mechanisms in both home and host States, such as courts, national contact points in States that are adherents to the OECD Guidelines for Multinational Enterprises, national human rights institutions or accountability mechanisms associated with lending institutions.

72. In many instances, company-level grievance mechanisms are not in place or are ineffective and unable to ensure the safety of those that seek to access them. At the other end of the spectrum, a number of companies have brought to the attention of the Special Rapporteur creative ways of supporting more traditional company grievance mechanisms, which is particularly useful when the safety of defenders is at stake.

[31] Centre for Research on Multinational Corporations, "Should I stay or should I go — exploring the role of disengagement in human rights due diligence" (2016).

C. Investors

73. Through their financing and technical support, a complex range of public and private institutions continue to be implicated in attacks against defenders — as amply documented by civil society organizations and brought to the attention of the Special Rapporteur through the communications procedure.

74. Those institutions have increasingly been linked to violations in connection with their projects, often as a result of poor due diligence practices and inattention to social risk. The safeguard policies adopted by major development banks serve as the default floor for other investors and, as such, set the tone for human rights defenders and stakeholder engagement in investment lending in general. However, all investors, whatever their governance structure and activities may be, are business enterprises in the meaning provided by the Guiding Principles and have an independent responsibility to respect human rights.

75. The killing of Berta Cáceres and other defenders reflects the urgency for investors to find effective processes to identify whether and where there could be threats to opponents of projects before investment decisions are made and to develop ways of mitigating those risks. Whereas it is ultimately the State that bears the bulk of the responsibility for safeguarding human rights and, as such, must be held accountable, financing development projects must show that they take human rights risks seriously and are not part of the problem. The broader trends towards repression have profound impacts for investors and should be met with meaningful action to support an enabling environment for participation and accountability.

76. The activities of development lending institutions are governed by a set of environmental and social safeguards, but most of these safeguards do not reflect a firm commitment to not infringe on human rights and that an overwhelming majority of development finance institutions continue to maintain a hard and irrational line with regard to human rights, in particular insofar as their own due diligence is concerned.

77. The preference for new forms of lending has also stirred concern among defenders. Development money is increasingly being channelled through third parties, known as financial intermediaries and covering banks, insurance companies, leasing companies, microfinance institutions and private equity funds. The rationale is that lending expands the reach and positive development impacts, an assumption that hinges on financial intermediaries and their clients complying with the social and environmental safeguards of the lending institution. Independent evaluations, however, present a different picture: lenders have little knowledge about the end beneficiaries or on whether their activities have a positive impact on people and the environment.[32] Numerous reports have shown the damage that financial intermediary lending has had, including for the activities and safety of defenders.[33] Blended sources of funding and lending through financial intermediaries also pose serious challenges for defenders seeking accountability, given that complex and obscure funding arrangements make it difficult to know who is funding the project and overlapping safeguard requirements result in confusion regarding where remedy can be sought.

---

[32] Office of the Compliance Advisor Ombudsman of the International Finance Corporation, "Audit Report on the Compliance Advisor Ombudsman Audit Sample of International Finance Corporation Investments in Third Party Financial Intermediaries" (October 2012).

[33] Oxfam International, "The suffering of others — the human cost of the International Finance Corporation's lending through financial intermediaries", issue brief (April 2015).

78. New lending institutions, including the Asian Infrastructure Investment Bank and the New Development Bank, have yet to demonstrate their ability to engage with defenders over project design, implementation and monitoring. Their respect for human rights may be challenged, however, by the lack of policy commitments to not infringe on human rights and of a requirement on the lender to exercise human rights due diligence; their favouring of national laws over international human rights; and their not yet operational grievance mechanisms. As "lean" institutions with scant human resources, compliance with safeguards and an open dialogue with defenders may also be at risk. Concern has been raised with the Special Rapporteur over the ownership of these institutions, because they were founded and are largely driven by Chinese interests. Time will tell whether the uneasy relationship between China and human rights defenders will be reproduced in the decision-making and operational activities of the banks.

79. The increasing availability of alternative funding sources through emerging development banks, coupled with demands from both clients and donors to be more efficient, has put significant pressure on traditional development lenders to increase both their volume and speed of lending. Regrettably, this appears to unfold through a substantive weakening of social and environmental safeguards. The recently revised safeguards of the World Bank — the industry standard-setter of safeguards in investment lending — are telling in that regard.[34] The revised standards will, in many respects, make it more difficult for the World Bank to ensure that civil freedoms are upheld and defenders respected. Of particular concern is the limited requirement for the World Bank to proactively seek and verify information provided by borrowers, including stakeholder engagement and consent, and to implement due diligence requirements on an ongoing basis. Excessively relying on borrowers to engage with affected stakeholders appears to be ill conceived, given the hostile climate in which defenders operate.

80. Inputs to the present report from development banks highlighted their limited ability to influence the businesses in which they invest. The Special Rapporteur considers that the challenge for development banks is not whether they can deal with human rights in projects, but how human rights risks can be addressed earlier in the project cycle, before serious damage is done. Traditional and emerging development banks should proactively address and show leadership in this regard. Early and ongoing due diligence should not be outsourced to borrowers and should involve defenders at all stages.

81. To address the situation of human rights defenders, several important levers of influence can be employed, such as investment criteria, including exclusion lists of countries and companies with extensive track records of threats and attacks against defenders, and contractual requirements for clients to ensure that defenders can safely and publicly air their grievances.

82. The Special Rapporteur encourages the process initiated at some development banks to explore ways of carrying out early warning screenings to better understand and respond to the risks to human rights defenders at an early stage in the consideration of potential investment opportunities. Existing risk-measuring assessments, such as the Systematic Operations Risk-Rating Tool of the World Bank, could be employed to consistently assess and monitor risks relating to civic space and defenders.

83. Development investors require varying degrees of on-site monitoring, including through visits by independent experts. On-site monitoring is an important component of human rights due diligence and should include human rights advisors

[34] World Bank, "Environmental and social framework" (August 2016).

with expertise on civic freedoms. Internal guidelines on defenders and the right to dissent could serve as an important benchmark. On-site monitoring should not be limited to high-risk projects, in particular given that both internal and external assessments of development finance institutions have indicated that projects are routinely classified as low-risk when facts are to the contrary.[35]

84. Complaint mechanisms should be readily accessible to defenders. They should be independent from undue influence by the institutions' management and have human rights experts in their membership. The Special Rapporteur is encouraged by the practice employed by the Dutch development bank of including a human rights expert in the membership of its accountability mechanism.

85. Many reports indicate a growing number of attacks against defenders seeking to access the accountability mechanisms of international financial institutions.[36] The Special Rapporteur sought to engage in dialogue with representatives of some of those institutions. He appreciates that some grievance mechanisms, such as the Inspection Panel and the Compliance Advisor Ombudsman of the World Bank Group, have adopted internal guidelines for how to deal with threats against complainants, however, these do not compensate for the absence of consistent responses by the institutions themselves. Development lenders should closely monitor for reprisals and, should they occur, respond promptly and publicly, including by exercising leverage over Governments to investigate and hold to account anyone who uses force against protestors or threatens or physically attacks critics

VI. Conclusions and recommendations

A. Conclusions

86. As the situation of defenders working in the field of business and human rights deteriorates in many parts of the world, it is crucial to recall our collective responsibility to protect those who defend and promote fundamental rights and freedoms. It is high time that we recognized the positive role of defenders working in the field of business and human rights — their legitimacy, experience, expertise and valuable contributions. It is high time that States, business enterprises and investors reaffirm their respective obligations. Concrete measures should be taken to de-escalate conflicts and counter the narrative against human rights advocacy. At the same time, underlying root causes, such as power imbalance, commodification and corruption, should be tackled to ensure long-term changes and to implement international commitments, such as the Sustainable Development Goals.

87. Much of the business and human rights agenda, including the protection of defenders who document adverse impacts and take action, continues to depend heavily on what States are willing or reluctant to do. States cannot meet their duty to protect against human rights abuses within their territory and/or jurisdiction in the absence of a safe and enabling environment in which defenders can address corporate human rights abuses. Governments need to explore ways to ensure that there is policy coherence between their endorsement of the Guiding Principles and their domestic regulatory frameworks, the latter of which are far too often relied upon to obstruct the work of defenders that seek to address corporate abuse.

[35] Independent Evaluation Group, "Safeguards and sustainability policies in a changing world — an independent evaluation of World Bank Group experience" (2010).

[36] Human Rights Watch, "At your own risk — reprisals against critics of World Bank Group projects" (June 2015).

88. Although States hold the main responsibility for ensuring an enabling environment for defenders, business enterprises also have an important role to play. Through their investment and sourcing decisions, companies in virtually all sectors may in effect erode such a safe and enabling environment. The corporate responsibility to respect human rights entails a positive duty to support the States in which they operate to foster an environment that is conducive to the work of defenders. This requires not interfering with defenders' legitimate activities, but also assessing the status of civic freedoms as part of companies' human rights due diligence and proactively engaging with concerned Governments over the findings. Doing so is a precondition for a due diligence process that genuinely gauges and addresses the company's human rights risks to stakeholders.

89. Given that many States have recently made commitments on sustainable development, now is the time to "walk the talk" and ensure that no one can be killed or be threatened for the mere fact of speaking up against human rights abuses.

B. Recommendations

90. **The Special Rapporteur calls upon States:**

(a) To adopt legislation that creates due diligence obligations for companies registered in their jurisdictions and those of their subsidiaries, subcontractors and suppliers where there is a risk of human rights violations or abuses;

(b) To implement laws and policies which legitimize and guarantee the participation of communities and defenders in business-related decisions, including the rights of trade unions and the right to free, prior and informed consent;

(c) In consultation with defenders, to review their domestic regulatory framework to ensure that it, in substance or effect, does not impede the work of defenders to effectively and without risk of retaliation (including legal retaliation) address corporate human rights impacts;

(d) To adopt legislation requiring companies to publicly disclose information, including information on their corporate structure and governance, contracts, licences concessions, business relationships (investors, suppliers and other trading parties included), scientific information about company operations, and company filings;

(e) To publicly acknowledge, at the most senior levels of Government, the critical role that defenders play in helping to bring to the attention of States and business enterprises business-related impacts on human rights;

(f) To adopt national guidelines on human rights defenders and national action plans on business and human rights to ensure policy coherence and establish clear consequences when companies have been found to be linked to attacks against defenders;

(g) To promptly and impartially investigate all attacks against human rights defenders;

(h) To take all measures to provide for effective redress;

(i) To take measures, in policy and practice, to ensure that the security of defenders can be guaranteed at all times, including when accessing grievance mechanisms. Such measures should integrate intersectional, collective and holistic approaches.

91. The Special Rapporteur encourages companies:

(a) To assess the situation of civic freedoms and human rights defenders in the countries in which they operate, identifying gaps between international standards and national laws and practice;

(b) To ensure that their policy commitments on human rights reflect the critical role that defenders play in bringing human rights issues to their attention and address the risks they face in doing so;

(c) To actively engage with defenders and grass-roots civil society organizations in the elaboration of their human rights policies;

(d) To address the situation of and risks to company employees in their capacity as defenders, as well as external human rights defenders, and their opportunities to safely address business-related human rights grievances;

(e) To establish and implement processes for the remediation of adverse human rights impacts arising in any area of operations.

92. The Special Rapporteur calls upon investors and financial institutions:

(a) To include in ex ante impact assessments an analysis of the state of civic freedoms in the country of investment as well as the lender's track record of engaging with defenders;

(b) To put into place gap-filling measures through which shortcomings are documented, including training for all staff, and ensure that respect for engagement with defenders and other stakeholders is duly reflected in contractual requirements;

(c) To withhold approval for investment where impact assessments reveal serious threats to civic freedoms and defenders at the country or local level;

(d) To develop guidelines that clearly communicate that criticism of activities financed by the institutions is an important part of improving the impacts of development efforts and that reprisals against defenders will not be tolerated;

(e) To approve such guidelines by the most senior management of these institutions, including guidance and specific training for staff on how to effectively engage with complainants and ensure their safety;

(f) To disclose all end users of financial intermediary loans and ensure that they bring their projects into line with safeguard requirements and human rights, whichever sets the higher standard, or stop lending to high-risk clients.

United Nations A/72/171

General Assembly

Distr.: General
19 July 2017

Original: English

Seventy-second session
Item 73 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights and international solidarity

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Independent Expert on human rights and international solidarity, Virginia Dandan, submitted in accordance with Human Rights Council resolution 26/6.

* A/72/150.

17-12217 (E) 150817

Please recycle

Report of the Independent Expert on human rights and international solidarity

Summary

In the present report, the Independent Expert on human rights and international solidarity, Virginia Dandan, outlines the draft declaration on the right to international solidarity. It is a post-script to the report that she presented to the Human Rights Council at its thirty-fifth session, in June 2017. The Independent Expert believes that the information that could not be included in detail in that report is just as important and hence requires further articulation.

In addition to significant details regarding the process of amending the first version of the draft declaration, the Independent Expert discusses the implications of the right to international solidarity in the achievement of Goal 17 of the 2030 Agenda for Sustainable Development, namely, to strengthen the means of implementation and revitalize the global partnership for sustainable development. In the 2030 Agenda, it was recognized that the global partnership, to ensure its implementation, must work in a spirit of global solidarity, especially solidarity with the poorest and with people in vulnerable situations.

Fundamentally, the draft declaration is an embodiment of the requirement contained in article 28 of the Universal Declaration of Human Rights that States create a social and international order in which all human rights and fundamental freedoms can be realized. A revitalized global partnership for sustainable development is an important component of such an order, one that would enable greater equity at all levels and would seek to give States the tools and resources that they need for the realization of human rights. In setting out a vision for a truly human rights-based approach to collective action at all levels, the draft declaration provides a basis for a partnership that is truly global and development that is truly sustainable.

Contents

		Page
I.	Introduction	3
II.	Presenting the draft declaration on the right to international solidarity	3
	A. International legal underpinnings of the right to international solidarity	3
	B. Comments on the revisions to and content of the draft declaration	4
III.	Draft declaration on the right to international solidarity and achievement of Sustainable Development Goal 17	7
	A. International solidarity and the Sustainable Development Goals	7
	B. International solidarity for a revitalized global partnership for sustainable development	8
IV.	Conclusion and recommendations	12

I. Introduction

1. In her most recent report to the Human Rights Council (A/HRC/35/35), the Independent Expert on human rights and international solidarity, Virginia Dandan, traced the history of the mandate of the Independent Expert and presented a draft declaration on the right to international solidarity, as mandated by the Council in its resolution 26/6.

2. The draft declaration is a consolidation of contributions from various experts of the United Nations, academic institutions and civil society, in particular non-governmental organizations, in addition to the results of studies, activities and work carried out by two successive mandate holders with the assistance of the Human Rights Council Advisory Committee. It has been refined through a process of regional consultations with States and civil society and pursuant to a meeting of legal experts.

3. In the present report, she illustrates the process of crafting the draft declaration, tracing it from its precursors in international law and General Assembly resolutions, through her own work and through input from other actors, to its current state.

4. She then demonstrates the practical relevance of the draft declaration by explaining its applicability to the achievement of Sustainable Development Goal 17 of the 2030 Agenda for Sustainable Development, to strengthen the means of implementation and revitalize the global partnership for sustainable development.

II. Presenting the draft declaration on the right to international solidarity

A. International legal underpinnings of the right to international solidarity

5. In her previous reports to the General Assembly (A/70/316 and A/71/280), the Independent Expert fully explained the international normative basis of the principle of international solidarity and the legal framework for the right to international solidarity. The legal framework is derived from three general sources: the Charter of the United Nations; the Universal Declaration of Human Rights and international human rights treaties; and the commitments relating to human rights and development that have been adopted by States at United Nations international conferences and summits and in General Assembly resolutions.

6. Those previous reports enumerated the specific provisions of the Charter, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, all of which underline the importance of international solidarity and international cooperation in international law, as well as the provisions of a number of international declarations and commitments that are reflective of international solidarity.

7. In addition, a number of General Assembly resolutions highlight the necessity of international solidarity to the achievement of common goals and the fulfilment of human rights obligations.

8. In 1970, the General Assembly adopted resolution 2625 (XXV), on the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

The Assembly affirmed therein the duty of States to cooperate in accordance with the Charter and noted the necessity of strengthening the principle of solidarity contained within the Charter for the purpose of addressing global challenges and for the promotion of universal respect for, and observance of, human rights and fundamental freedoms.

9. In 2002, in its resolution 57/265, the General Assembly established the World Solidarity Fund, with the goal of eradicating poverty and promoting social and human development.

10. In 2005, its resolution 60/209, while commemorating the implementation of the first United Nations Decade for the Eradication of Poverty, the General Assembly recalled that international solidarity had been identified in the United Nations Millennium Declaration as one of the fundamental and universal values that should underlie relations between peoples and proclaimed International Human Solidarity Day, to be celebrated on 20 December each year.

11. Furthermore, in 2006, in its resolution 60/251, establishing the Human Rights Council, the General Assembly recognized that the promotion and protection of human rights should be based on the principles of cooperation and genuine dialogue and aimed at strengthening the capacity of Member States to comply with their human rights obligations for the benefit of all human beings.

B. Comments on the revisions to and content of the draft declaration

12. At the twenty-sixth session of the Human Rights Council, in June 2014, the Independent Expert presented a report containing a proposed draft declaration on the right of peoples and individuals to international solidarity (A/HRC/26/34, annex). She explained therein that, because the document had been prepared in the absence of comments and input from most States, she had used the word "proposed" in the title of the draft declaration. In that regard, one of her recommendations was that the Council hold regional consultations on the proposed draft declaration so that she would be able to gather as much input as possible from States and their representatives. At the end of the consultation cycle, she would consolidate and consider the output, revise the proposed draft declaration as appropriate and submit an amended version for consideration.

13. In its resolution 26/6, the Human Rights Council noted with appreciation the proposed draft declaration and decided that, to obtain further input from as many Member States as possible, the Independent Expert, with the assistance of the Office of the United Nations High Commissioner for Human Rights, would convene regional consultations, consolidate and consider the output therefrom and submit a report at the thirty-second session, in June 2016. The Independent Expert was also requested to submit a revised draft declaration to the Council and the General Assembly before the end of her second term, in June 2017.

14. The Independent Expert has revised the proposed draft declaration pursuant to five regional consultations conducted in 2015 and 2016 and an expert group meeting held in February 2017, as well as significant further reflection and research. The goals of that process were to incorporate the perspectives of Member States, civil society and experts into the draft declaration, as appropriate, and to harmonize the document with the existing framework of international law, in particular international human rights law.

15. Throughout the draft declaration, the Independent Expert has incorporated references to language and concepts already agreed upon in established international legal documents, including the Charter, the Universal Declaration of Human Rights

and the United Nations Framework Convention on Climate Change, in order to strengthen the preamble and further develop a well-founded legal framework for the right to international solidarity.

16. During the regional consultations, there was broad agreement that the title could be simplified to "draft declaration on the right to international solidarity", because the rights holders, namely peoples and individuals, were clearly indicated in the text itself.

17. The discussions of the expert group meeting included meaningful consideration of the structure of the declaration as a whole and of questions as to whether it would be best to first define the right to international solidarity, since that was the subject of the declaration, or to begin instead by defining the broader concept of international solidarity before proceeding to the substance of the right.

18. The expert group meeting also included significant discussion on the relevance of such a draft declaration at a time of rising nationalism and fragmentation. The experts suggested that current events had truly highlighted the need for such a document. They also suggested that a human rights-based vision of international solidarity could create an alternative narrative to that of globalization, which was increasingly perceived to be a harmful and entirely negative force. There was uniform recognition that, despite political sentiment that focused on divisions, humans existed in a state of interconnectedness and interdependence and there were global challenges that could not be resolved without international solidarity.

1. Preamble

19. Consistent with the recommendations received during the regional consultations and, in particular, during the expert group meeting, the Independent Expert has synchronized the preamble with the operative paragraphs, providing a solid context while avoiding duplication.

20. The Independent Expert has also ensured that the preamble reflects the full range of international law that has its basis in international solidarity, adding specific references to international humanitarian and refugee law, climate change law, labour law and other areas of global concern, as well as to regional treaties and covenants.

21. The expert group carefully considered how best to reflect the incorporation of international solidarity throughout international law, including how to ensure that each area of law and each international instrument would be highlighted appropriately and that the documents referenced would truly demonstrate international solidarity.

2. Definition, principles and objectives of international solidarity

22. Following the recommendations, the Independent Expert sought to consolidate articles defining international solidarity. She identified international solidarity as a foundational principle underlying international law and enumerated related principles articulated in international law that provide a basis for it.

23. The expert group considered how to emphasize the primacy of human rights in the definition of international solidarity while also recognizing that the principle was broad in nature, extending to every facet of international law and cooperation, and thus relevant in addressing all human rights and human needs.

24. In response to that discussion, the Independent Expert included reactive solidarity in the constituent elements listed in the text. That list represents an effort

to capture most, if not all, of the types of action taken by States and the international community that could be viewed as expressing international solidarity.

3. Right to international solidarity

25. The Independent Expert has taken care to clearly and meaningfully define the right to international solidarity, mindful of the comments received and of established international law. Responding to the suggestions made, the Independent Expert simplified the articles articulating the holders and duty bearers of the right and clarified the definition of the non-State actors who, in addition to States, are identified as duty bearers of the right.

26. Echoing a conversation that arose during the regional consultations, the expert group also debated whether the right to international solidarity should be classified as a justiciable right. While some experts struggled to imagine a context in which rights holders might be able to claim the right before a court of law, another suggested that the right, for example, might provide a cause of action for a civil society organization that was being targeted by a State for receiving funding from foreign sources, and yet another proposed that it might be mobilized for the protection of those who were being prosecuted for providing aid to migrants.

4. Implementation of the right to international solidarity

27. On the basis of the recommendations, the Independent Expert aligned the implementation portion of the draft declaration with that of other international declarations by simplifying and generalizing the positive obligations contained in the right to international solidarity and by eliminating the list of negative obligations, many of which were mirrored in the positive obligations already provided.

28. The expert group gave careful consideration to the particular global issues and challenges that should be enumerated in the implementation articles, recognizing that, while certain issues should be highlighted, it was important to make it clear that the implementation of the right was not limited only to those particular areas. The Independent Expert emphasized that the selection of issues highlighted reflected the priorities of prior consultations, as well as the need to illustrate linkages between issues that were often overlooked in the discourse.

5. Presentation to the Human Rights Council

29. On 6 June 2017, the Independent Expert presented her report, including the draft declaration, to the Human Rights Council.

30. The States that responded to the presentation overwhelmingly welcomed her work, and many spoke of the value of the draft declaration as a powerful tool for addressing global challenges.

31. Some States expressed some scepticism regarding the draft declaration, however. They suggested that, while they respected the principle of international solidarity, they were uncertain as to whether it could be understood as rising to the level of a human rights standard.

32. In response, the Independent Expert emphasized that human rights standards were not static concepts, but that they evolved over time, as a result of the practices and understandings of States, peoples and individuals.

III. Draft declaration on the right to international solidarity and achievement of Sustainable Development Goal 17

A. International solidarity and the Sustainable Development Goals

33. In her report of 2014 to the General Assembly (A/69/366), the Independent Expert explored the potential contributions of international solidarity to the formation of the then-nascent Sustainable Development Goals, seeking to ensure that the Goals would be consistent with universal human rights standards. Now that the 2030 Agenda for Sustainable Development and the Goals have been adopted, it remains essential, as acknowledged in the 2030 Agenda, that the Goals be accomplished in a manner that reflects the responsibilities of all States to live up to their human rights commitments.

34. The Goals, just as human rights themselves, are interconnected and indivisible. The draft declaration highlights this interconnectedness of human rights, just as it highlights human interconnectedness, calling attention to the fact that none of the Goals can be addressed in isolation.

35. In the report, the Independent Expert highlighted the relevance of her proposed draft declaration, which had recently been submitted to the Human Rights Council, to three areas of concern for the then-future Goals: overcoming inequality and ending poverty and discrimination; building effective and accountable institutions and peaceful societies; and international cooperation, including strengthening implementation and revitalizing global partnerships.

36. With regard to the first area of concern, reflected throughout the first 12 Goals, the Independent Expert explained that overcoming inequality and ending poverty was a human rights imperative that was protected in international human rights instruments and noted that the right to international solidarity required States to comply with their obligations in adhering to the international human rights treaties that they had ratified (ibid., paras. 21-22).[1] She also noted that the right to international solidarity called particular attention to marginalized and vulnerable groups that were frequently neglected or not taken into account within the international system.

37. The second area of concern was particularly brought to light through Goal 16, to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. In relation to that area of concern, the Independent Expert highlighted the manner in which her proposed draft declaration informed the principles of good governance, accountability and participation. She emphasized the responsibility for good governance and accountability that was placed on the duty bearers of the right to international solidarity and the call expressed in her proposed draft declaration that States protect the rights of peoples and individuals to participate fully and freely in decision-making, from the local to the international levels (ibid., paras. 31 and 33).[2] These principles are similarly reflected in the final version of the draft declaration.

38. With regard to the third area of concern, the Independent Expert highlighted the crucial interplay between global action, international cooperation and the realization of the right to international solidarity. Now that both the draft declaration and the Sustainable Development Goals and its targets have been finalized, she will devote the remainder of the present report to exploring that interplay more fully.

[1] See also A/HRC/26/34, annex, art. 8 (2).

[2] See also A/HRC/26/34, annex, art. 9 (3).

B. International solidarity for a revitalized global partnership for sustainable development

39. In May 2013, the High-level Panel of Eminent Persons on the Post-2015 Development Agenda submitted to the Secretary-General its report, entitled *A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development*.[3] In the report, the High-level Panel identified "five big, transformative shifts" necessary to the achievement of a new global development agenda, describing the fifth, to "forge a new global partnership", as "the most important transformative shift ... towards a new spirit of solidarity, cooperation and mutual accountability that must underpin the post-2015 agenda".

40. In the same report, the High-level Panel reiterated its vision, contained in the communiqué issued on 28 March 2013, pursuant to its meeting held in Nusa Dua, Bali, Indonesia, of a renewed global partnership "that enables a transformative, people-centred and planet-sensitive development agenda which is realized through the equal partnership of all stakeholders. Such partnership should be based on the principles of equity, sustainability, solidarity, respect for humanity and shared responsibilities, in accordance with respective capabilities."[4]

41. In August 2014, the Open Working Group of the General Assembly on Sustainable Development Goals submitted to the Assembly its report containing its proposed goals (A/68/970 and Corr.1). In the report, the Open Working Group reaffirmed the principles and commitments made in a number of internationally agreed documents and the importance of the Universal Declaration of Human Rights and other international human rights instruments. The authors cited the outcome document of the United Nations Conference on Sustainable Development (Assembly resolution 66/288, annex), in which it had been recognized that each country faced specific challenges to achieve sustainable development and reaffirmed that the commitment to strengthening international cooperation to address the persistent challenges related to sustainable development for all, in particular in developing countries. The Open Working Group acknowledged the need of developing countries for additional resources for sustainable development, and for the mobilization of resources from a variety of sources.

42. In recognition of those needs, the Open Working Group reaffirmed the commitment, also expressed in the above-mentioned outcome document, to reinvigorating the global partnership for sustainable development and proposed that Goal 17 be to strengthen the means of implementation and revitalize the global partnership for sustainable development.

43. The Goal was ultimately adopted by the General Assembly, in its resolution 70/1, as part of the 2030 Agenda, with targets relating to finance, technology, capacity-building, trade and systemic issues, the last-mentioned including policy and institutional coherence, multi-stakeholder partnerships and data, monitoring and accountability.

1. Global partnership for sustainable development

44. In the 2030 Agenda, it was recognized that the global partnership, to ensure its implementation, must work in a spirit of global solidarity, especially solidarity with the poorest and with people in vulnerable situations (General Assembly resolution 70/1, para. 39). The draft declaration is the formal embodiment of that spirit, giving it substance in a manner consistent with international human rights standards.

---

[3] United Nations publication, Sales No. E.13.I.10.

[4] Available from www.un.org/sg/management/hlppost2015.shtml.

45. The draft declaration foregrounds and builds on the elements of international law that have already laid the groundwork for revitalizing the global partnership for sustainable development. Notably, it draws on, and contributes to, the global effort against climate change, recognizing the importance of the concept of common but differentiated responsibilities both for and beyond that struggle.

46. Beyond international cooperation, the right to international solidarity requires the deployment of preventive solidarity aimed at proactively preventing and removing the root causes of inequalities between developed and developing countries and the structural obstacles that generate poverty worldwide and at creating an overarching enabling environment in which all human rights can be progressively realized. Such deployment would make it possible to realize the commitment contained in the 2030 Agenda to strengthening the voice and participation of developing countries in international decision-making, norm-setting and global governance (ibid., para. 44).

47. Preventive solidarity, a constituent element of international solidarity, is essential in achieving both intergenerational and intragenerational solidarity and is a vital component of the duty of States to provide and seek international cooperation and assistance in the implementation of their human rights obligations.

48. The draft declaration recognizes that, with regard to the implementation of their foreign policy and their bilateral, regional and international agreements and partnerships, States are accountable for the actions of the international organizations of which they are members, in conformity with their international human rights obligations. That recognition not only encompasses the acknowledgment underlined in the 2030 Agenda of the important role and comparative advantage of an adequately resourced, relevant, coherent, efficient and effective United Nations system in supporting the achievement of the Sustainable Development Goals (ibid., para. 46), but also goes beyond it in calling upon States to recognize and fulfil their extraterritorial human rights obligations in all aspects of their foreign policy, including in their efforts to achieve the Goals.

49. Importantly, the draft declaration provides an understanding of international solidarity that goes well beyond relationships between States. The holders of the right to international solidarity are individuals and peoples, and the duty bearers mainly States, but also some non-State actors (A/HRC/35/35, annex, arts. 5-6). That notion reflects the understanding that a global partnership for human rights and sustainable development must truly be global, not merely international, incorporating the efforts of many stakeholders at all levels and fundamentally driven by the will of the people.

50. Fundamentally, the draft declaration is an embodiment of the requirement contained in article 28 of the Universal Declaration of Human Rights that States create a social and international order in which all human rights and fundamental freedoms can be realized. A revitalized global partnership for sustainable development is an important component of such an order, one that would enable greater equity at all levels and would seek to give States the tools and resources that they need for the realization of human rights.

2. Finance

51. In recognition of the key role that resources play in sustainable development, the first five targets of Sustainable Development Goal 17 are concerned with finance. They call for strengthened domestic resource mobilization, including through international support; full implementation of official development assistance (ODA) commitments; mobilization of additional financial resources for developing countries; assistance to developing countries in attaining long-term debt

sustainability and the reduction of debt distress; and the adoption and implementation of investment promotion regimes for least developed countries.

52. States are obligated to mobilize resources for the realization of human rights,[5] including through international cooperation and assistance.[6] Meeting ODA commitments is key to fulfilling these obligations, but beyond the mere allocation of funding, ODA and all development financing and resource mobilization, including sovereign debt, must be consistent with human rights principles. It should be effective and transparent, distributed in a manner that is participatory and accountable and targeted to the most vulnerable and those most in need. Furthermore, all development financing and resource mobilization must be accomplished in a manner that guarantees equal access and non-discrimination and that seeks to eliminate barriers to access for traditionally excluded groups. As members of international financial institutions or as individual lenders, States must not impose conditions on borrower States that would lead to retrogression on the fulfilment of human rights (A/HRC/20/23, para. 40).[7]

53. In the draft declaration, States are urged to cooperate with one another to address key development issues while taking into account their interrelationships and the importance of non-discrimination, emphasizing the need to ensure that international agreements and standards around finance are consistent with human rights obligations (A/HRC/35/35, annex, art. 7). It includes a mandate for a human rights-based approach to international cooperation, including in the global response to foreign debt, sustainable development and investment, and a vision of international cooperation that is targeted above all to the primary responsibility of each State to devote the maximum available resources for the implementation of its human rights obligations (ibid., art. 9). It thus provides a framework for ensuring a human rights-based approach to the finance targets for Sustainable Development Goal 17.

3. Technology and capacity-building

54. Targets 17.6 to 17.9 are concerned with technology, including enhancing international cooperation on science, technology and innovation promoting technology transfer to developing countries, operationalizing the technology bank and science, technology and innovation capacity-building mechanism for least developed countries, and capacity-building.

55. Human rights standards require that States not allow global intellectual property regimes to interfere with the dissemination of technology that would enable sustainable development and the realization of human rights. Beyond that, new technology for sustainable development should be developed and disseminated in a manner that is equitable and that takes into particular account the needs of the most vulnerable.

56. International cooperation should seek to build the capacity of developing countries to fulfil their international human rights obligations and to implement the Sustainable Development Goals, as well as to participate fully and equally in

[5] International Covenant on Economic, Social and Cultural Rights, art. 2; Convention on the Rights of the Child, art. 4; and Convention on the Rights of Persons with Disabilities, art. 4.2.

[6] Charter of the United Nations, Articles 55-56; International Covenant on Economic, Social and Cultural Rights, arts. 2.1 and 11.2; Convention on the Rights of the Child, art. 4; and Convention on the Rights of Persons with Disabilities, art. 32.

[7] See also resolution 70/1, para. 44; art. 18 of the articles on responsibility of States for internationally wrongful acts (resolution 56/83, annex); Committee on Economic, Social and Cultural Rights, general comment No. 8 (1997) on the relationship between economic sanctions and respect for economic, social and cultural rights.

international processes. It should also seek to build the capacity of those who have traditionally been excluded from political and development processes, to enable them to participate in those processes and gain access to social benefits without discrimination.

57. Preventive solidarity includes a vision of shared technological endeavours aimed at finding a common solution to common problems and of enabling each State to fulfil its human rights obligations. The human rights-based approach to international cooperation contained in the draft declaration includes technological exchange in collective action to address poverty, hunger, preventable deaths and other global challenges that are also a part of the 2030 Agenda, a recognition of the need to build the capacities of both developing countries and traditionally marginalized groups and a call for structures of global governance that enable the capacity of all countries to defend human rights at the global level (ibid., art. 2).

4. Trade

58. The next set of targets, 17.10 to 17.12, deals with trade. The targets emphasize the need for a universal and equitable multilateral trading system, increasing the exports of developing countries, and the realization of market access for least developed countries.

59. Human rights advocates have long sought to call attention to the democratic deficits in the international trade regime and have questioned whether this regime is ideally designed to enable the realization of human rights.[8] They have noted the manner in which economic power dictates negotiating strength, both inside and outside the World Trade Organization, and the challenges created when developing countries lack the capacity to participate equally in trade negotiations. They have questioned the primacy of economics in our understanding of development and have emphasized that gains from trade must be measured in terms of capacity for individual self-realization, rather than aggregate economic growth.

60. The right to international solidarity again emphasizes that international action with respect to trade must apply a human-rights based approach. That is the only way to ensure that benefits from trade are distributed in a manner consistent with human rights principles and that leads to poverty alleviation and development that is truly sustainable. In an era that has seen a backlash against globalization spreading around the world, the draft declaration provides an alternative vision of positive engagement in the global community.

5. Systemic issues

61. The final set of targets under Goal 17 is directed at systemic issues, including policy coordination and coherence, respect for policy space, multi-stakeholder partnerships and data, monitoring and accountability.

62. Maintaining policy coherence for sustainable development should have the goal of ensuring that economic and political mechanisms and institutions are in line with human rights standards. The international community should act, directed by the considerations and principles set out throughout the present section, to ensure coherence between the international legal regimes for trade, finance, investment and governance and the norms and standards for labour, the environment, human rights, equality and sustainability.

63. In the 2030 Agenda, the General Assembly recognized the need for international financial institutions to support the policy space of each country, in

[8] See, for example, E/CN.4/2005/41, sect. II.C, and E/CN.4/Sub.2/2004/17.

particular developing countries (resolution 70/1, para. 44). That obligation must apply to the international system as a whole. No structures or relationships at the international or bilateral level should operate to restrict the capability of States to act for the realization of human rights.

64. As noted above, true sustainable development cannot be a purely State-based or State-driven process. On the contrary, it must be person-centred and involve the participation and efforts of a vast range of stakeholders. Private actors have enormous impacts on human rights and sustainable development and therefore bear a responsibility to respect human rights.

65. A human rights-based approach to data, monitoring and accountability respects the principles of participation, data disaggregation, self-identification, transparency, privacy and accountability.[9] It also entails measuring development in a manner that is broader and more people-centred than gross domestic product, seeking to capture whether economic growth is truly meeting the needs and rights of the people in a manner that is equitable and sustainable.

66. In grounding all international action in human rights, the draft declaration generates policy coherence. In emphasizing the mutual necessity of solidarity and sovereignty, it preserves policy space. In recognizing that duty bearers include some non-State actors, it provides a framework for effective and accountable multi-stakeholder partnerships. By setting out a vision of a human rights-based approach to international cooperation, it enables the creation of an international system that addresses those systemic issues in their entirety.

IV. Conclusion and recommendations

67. The Independent Expert recalls coming away from the five regional consultations with an even firmer conviction regarding the feasibility and enforceability of the right to international solidarity as outlined in the current draft declaration on the right to international solidarity (A/HRC/35/35, annex). The regional consultations confirmed that many States already had the functioning institutions and agencies necessary to implement the right to international solidarity. The Independent Expert notes with interest that the output of the regional consultations echoed the text of Human Rights Council resolution 35/3, adopted on 22 June 2017, in which it was recognized that "there is an overwhelming manifestation of solidarity by States, individually and collectively, by civil society, by global social movements and by countless people of good will reaching out to others, and that this solidarity is commonly practised at the national, regional and international levels.

68. It thus appears, by all indications from the five regional consultations and the country visits of the Independent Expert, that those working on the ground do possess the knowledge and experience to make the right to international solidarity work in practice. It is also evident from the experiences narrated by national and regional actors that, although it may take a while to surmount some obstacles, the right can be effectively implemented in culturally diverse ways that do not in any way diminish the standards outlined in the draft declaration.

[9] Office of the United Nations High Commissioner for Human Rights, "A human rights-based approach to data: leaving no one behind in the 2030 development agenda — guidance note to data collection and disaggregation", available from www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf.

69. When recognized for what it is outside of political rhetoric and considerations, the draft declaration on the right to international solidarity must be fully considered as crucial to addressing both the impacts of present-day global challenges, including the refugee and migration crises and the unabated horrors of terrorism and trafficking in persons. Notably, the draft declaration would anchor global partnerships in which international commitments would be nurtured and advanced. It would thus be instrumental to the successful completion of the 2030 Agenda.

70. As States seek to revitalize the global partnership for sustainable development, they must ground that partnership in human rights law and in respect for human rights principles, in particular equality, non-discrimination, participation, accountability, transparency, attention to marginalized and disadvantaged groups and the rule of law. In setting out a vision for a truly human rights-based approach to collective action at all levels, the draft declaration provides a basis for a partnership that is truly global and development that is truly sustainable.

United Nations A/72/172

General Assembly

Distr.: General
19 July 2017

Original: English

Seventy-second session
Item 73 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protection against violence and discrimination based on sexual orientation and gender identity

Note by the Secretary-General

The Secretary-General has the honour to transmit the report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Vitit Muntarbhorn, in accordance with Human Rights Council resolution 32/2.

* A/72/150.

17-12222 (E) 100817

Please recycle

Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*

Summary

The theme of the present report is "Embrace diversity and energize humanity". Key developments in 2017 are noted, particularly in regard to the progression of human rights law and practice at the international and national levels; intersectionality between sexual orientation and gender identity and other issues concerning violence and discrimination; and dialogue and cooperation between the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and stakeholders.

Two of the various underpinnings introduced in the Independent Expert's first report (A/HRC/35/36) are singled out for particular attention to help prevent and overcome violence and discrimination: namely, decriminalization of consensual same-sex relations and gender identity and expression, and effective anti-discrimination measures. The report includes an overview of country situations, as highlighted by various actors through submissions sent to the Independent Expert. The report calls for reform of the laws, policies and practices which criminalize consensual same-sex relations, as well as those relating to gender identity and its expression. Pending repeal of discriminatory laws, the preferred policy is to desist from applying such negative laws and policies. Effective anti-discrimination measures are also critically needed; they vary from laws to policies and other action in a comprehensive and human rights-responsive setting.

Contents

		Page
I.	Introduction	3
II.	Methodology	4
III.	Mandate	4
IV.	Key developments	6
	A. Progression of human rights law and practice at the international and national levels	6
	B. Intersectionality between sexual orientation and gender identity and other issues concerning violence and discrimination	8
	C. Dialogue and cooperation between the Independent Expert and stakeholders	9
V.	Decriminalization of consensual same-sex relations and gender identity (covering also gender expression)	11
VI.	Effective anti-discrimination measures	17
VII.	Conclusions and recommendations	21

* The Independent Expert wishes to thank the Office of the United Nations High Commissioner for Human Rights for its assistance with the report as well as all those in Bangkok who kindly provided technical assistance.

I. Introduction

"Regularly people tell me I do not have the right to live."
Nikita (18), transgender man[a]

"Violence and discrimination occur in all public and private entities."
Economic Commission for Latin American and the Caribbean[b]

"Research shows that a country's growth is inversely correlated with the level of discrimination against ethnic, religious and sexual minorities under the law."
World Bank[c]

[a] *Out in the Open: Education Sector Responses to Violence based on Sexual Orientation and Gender Identity/Expression* (United Nations Educational, Scientific and Cultural Organization, Paris, 2016), p. 22. Available from http://unesdoc.unesco.org/images/0024/002447/244756e.pdf.

[b] Submission of the Economic Commission for Latin American and the Caribbean to the Independent Expert. In June 2017, in accordance with his call for information, a variety of stakeholders submitted their responses to the Independent Expert.

[c] See Elaine Panter and others, *Antidiscrimination law and shared prosperity: an analysis of the legal framework of six economies and their impact on the equality of opportunities of ethnic, religious, and sexual minorities*, Policy Research Working Paper WPS 7992 (World Bank Group, 2017), summarized in submission of the World Bank to the Independent Expert.

1. The theme of the present report is "Embrace diversity and energize humanity". It has been submitted by Vitit Muntarbhorn, who in 2016 was appointed as the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, pursuant to Human Rights Council resolution 32/2. He wishes to warmly thank Governments, international organizations, non-governmental organizations, communities, individuals and other stakeholders for their kind support. In accordance with the request of the Council in its resolution 32/2, paragraph 4, the first report of the Independent Expert was submitted to the Council in April 2017 (A/HRC/35/36). The present report is submitted in line with paragraph 4 of the same resolution, in which the Council requested the Independent Expert to present a report to the General Assembly at its seventy-second session. The Independent Expert will elaborate upon the six underpinnings mentioned in his first report, adjusted as follows: decriminalization of consensual same-sex relations and of gender identity and expression; effective anti-discrimination measures; legal recognition of gender identity; destigmatization linked with depathologization; sociocultural inclusion; and education with empathy. The present report (part one) will address the first two underpinnings, decriminalization and anti-discrimination. Parts two and three, due in 2018, will deal with the other underpinnings consecutively.

2. It should be recalled that everyone has some form of sexual orientation and gender identity. Sexual orientation denotes a person's physical, romantic and/or emotional attraction towards others, while gender identity concerns a person's self-perceived identity, which may be different from the sex assigned at birth, as well as the expression of gender identity. The two notions should not be conflated. However, it is unconscionable that persons with an actual or perceived sexual orientation and/or gender identity different from a particular social norm are targeted for violence and discrimination in many parts of the world. Killings, rape, mutilation, torture and cruel, inhuman and degrading treatment as well as arbitrary detention, abduction, harassment, physical and mental assaults such as lashings and forced surgical interventions, bullying from a young age, pressures leading to

suicide, and discriminatory action, aggravated by incitement to hatred, in relation to sexual orientation and gender identity are pervasive in numerous settings.

3. The establishment of the mandate to promote action against violence and discrimination based on sexual orientation and gender identity is anchored in international human rights law, and it is a momentous commitment to multilateralism. It is an invitation to be forward looking and an incentive to move forward together. The present report is thus a clarion call to embrace diversity, complemented by the belief that respect for human rights energizes human society, yielding a positive dividend in terms of peace, sustainable development and societal inclusiveness. It also contributes to economic benefits, while reinforcing a sense of common humanity transcending borders and cultures.

II. Methodology

4. From the outset, the Independent Expert has adopted an approach of open and constructive dialogue and engagement with a broad range of stakeholders. He has drawn from a variety of sources — governmental, intergovernmental and non-governmental — for his work, balancing among them. He has also held separate meetings with embassies, United Nations agencies and concerned groups to amplify discussions. For the present report, the Independent Expert sent out a letter in May 2017 asking for inputs. The responses, received before the end of June 2017, have been integrated into the report where relevant, and they may also be incorporated into his future reports. He conveys his deepest thanks to all who responded to his request.

5. Through the methodology outlined above, the Independent Expert wishes to give voice to the many national actors who are instrumental in prompting the review and repeal of laws that discriminate against people on the basis of their sexual orientation or gender identity and expression and who contribute to the adoption of non-discrimination provisions. He also wishes to highlight dynamics at the national level and the role of various pillars of the States which can activate the reform process. The report is not intended to provide a comprehensive and geographically inclusive overview of the two underpinnings.

III. Mandate

6. The Independent Expert follows and responds closely to the mandate established by resolution 32/2. The post of the Independent Expert is pro bono. Key elements emanating from the mandate can be summarized under five main areas as follows: implementation of international instruments, with identification of good practices and gaps; awareness of the violence and discrimination issue, and linkage with root causes; engagement, consultation and cooperation with States and other stakeholders; identifying multiple, intersecting and aggravated forms of violence and discrimination; and support for international cooperation and related services to assist national efforts. The Independent Expert offered an analysis of those elements in his first report and in the present report will update them with recent developments.

7. Some preliminary considerations shed light on the operationalization of the mandate. First, the acronym LGBT often appears and is closely linked with the mandate. It stands for "lesbian, gay, bisexual and transgender person(s)". The term "intersex persons" is abbreviated as "I" and a recent definition is as follows: "intersex persons are born with bodies that vary from male or female". It should be

noted that being intersex is distinct from sexual orientation and gender identity and that intersex people face different issues.[1]

8. Second, the Independent Expert is totally conscious of the various sensitivities underlying the mandate. Effective responses on this front would have to be grounded in international human rights law and targeted against violence and discrimination. There is no advocacy of new rights. The modus operandi of the Independent Expert is thus to engage with a broad range of stakeholders, open doors, build bridges and offer windows of opportunities for constructive change.

9. Third, the mandate recognizes that the issue of sexual orientation and gender identity interplays with a variety of pillars of power at the national and international levels. For instance, there may be a healthy range of opinions at the national level in many countries, with the judiciary or parliamentary pillar being more progressive than the executive branch or vice versa, offering the possibility of reform in regard to those national measures that are not in conformity with international standards. The diversity of pillars will be further illustrated below (see table, sect. VI). There is also a call for more space for a strong civil society, national human rights institutions and human rights defenders. In fact, the need for effective checks and balances to prevent abuse of power and to ensure compliance with international human rights law invites a diversity of processes and mechanisms respectful of international law.

10. Fourth, precisely because so many issues under the mandate reach out to an array of sectors and professions, it is essential to broaden the discourse and vistas for cooperation. For example, change in the medical and scientific sector is pivotal in helping to prevent violence and discrimination relating to health concerns. Where the situation was once pathologized, giving rise to potential or actual abuse and stigma, there is now momentum towards depathologizing and destigmatizing in relation to sexual orientation and gender identity, with due regard to ensuring access to comprehensive and quality health care for all. If the issue is interrelated with employment, there is now a call to interlink increasingly with the business sector. Where there are issues of faith and religion, it is important to reach out to spiritual leaders and actors and seek interfaith cooperation to complement international standards. Where there is a quest to shun hate speech and incitement to violence, a key catalyst is the ever-growing presence of social media and its responsiveness to human rights.

11. Fifth, there is the context-specific nature of each country. The situation is not necessarily the same for LGBTI persons across the board; the scenario is not homogeneous but heterogeneous. In one country, for example, transgender (trans) persons are not permitted to change their identification documents (such as a birth certificate or identity card) to have their self-identified gender recognized, or they are required to meet abusive requirements such as compulsory surgery and sterilization, medical certification or divorce. The lack of status recognition results in a range of complications, such as bullying from a young age, sexual assault, and mockery and humiliation inflicted on them in daily life as well as when they seek to cross borders or access services and facilities. Nevertheless, in that same country there is no law against same-sex relationships and the situation is quite open for gays, lesbians and bisexuals. While the situations are diverse, it should be underlined that human rights predicate the protection of all persons without distinction.

[1] Submission of Global Action for Trans Equality to the Independent Expert (https://transactivists.org/).

12. Sixth, there is the welcome development that sexual orientation and gender identity is now an integral part of the United Nations agenda; the issue is legitimized and synchronized for global action. While there is always room for a plurality of views, the commitment to combat violence and discrimination is universal and ineluctable. It is enhanced by the all-embracing pledge that no one will be left behind, set out in the preamble to resolution 70/1, entitled "Transforming our world: the 2030 Agenda for Sustainable Development", adopted by the General Assembly on 25 September 2015.

IV. Key developments

13. The present section highlights developments in the past few months, particularly in relation to action against violence and discrimination at the international and national levels, the intersectionality between sexual orientation and gender identity and other issues, such as children and youth, and the Independent Expert's dialogues and support for international and national cooperation. Good practices and gaps are identified in sections V and VI on decriminalization and anti-discrimination, respectively.

A. Progression of human rights law and practice at the international and national levels

14. The right to be free from discrimination is enshrined in article 2 of the Universal Declaration of Human Rights and all human rights treaties. Issues relating to sexual orientation and gender identity have been dealt with by the monitoring bodies under the human rights treaties in their relationship with States, and a number of those bodies, including those created under the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of Persons with Disabilities, have adopted general comments that refer expressly to sexual orientation and gender identity. The mandate of the Independent Expert is founded on this bedrock of international human rights law.

15. More recently, the views adopted in 2017 by the Human Rights Committee in the case of *G. v. Australia*, favouring the request of a married transgender person to have a birth certificate that correctly identifies the person's gender identity, strengthen the right to be free from discrimination, as well as the right to privacy and family.[2]

16. All countries have engaged with the universal periodic review of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and largely with one or more of the special procedures. There has been much coverage of the issue of sexual orientation and gender identity under those mechanisms, particularly from the perspectives of anti-violence and anti-discrimination. A total of 113 States Members of the United Nations from all regions have voluntarily accepted, in the context of the universal periodic review, at least one recommendation to address violence and discrimination based on sexual orientation and gender identity, and this is welcome.

[2] See communication No. 2172/2012, *G. v. Australia*, views adopted on 17 March 2017.

17. The initiatives of regional organizations have added constructive developments. The European human rights system, the inter-American human rights system, the African human rights system, the Arab Charter on Human Rights and the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration all uphold the right to be free from discrimination and have provisions countering violence to human life that can bolster the protection of persons under the rubric of sexual orientation and gender identity. Importantly, the European Court of Human Rights in 2017 found that forced sterilization (particularly affecting transgender people who wish to have their self-perceived gender identity recognized by the State) was in contravention of human rights;[3] another case found that a local law constraining free speech in relation to sexual orientation was in breach of the Convention for the Protection of Human Rights and Fundamental Freedoms.[4]

18. The inter-American system has made many contributions to action against violence and discrimination. In addition to its important range of human rights-related declarations and conventions, the Inter-American Court of Human Rights Court and the Inter-American Commission on Human Rights, the inter-American system has appointed a regional rapporteur to cover the issue of LGBTI persons specifically. Resolution 275 of the African Commission on Human and Peoples' Rights, entitled "Protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity", resonates with the message of non-violence and equality.[5]

19. Participants in a meeting of national human rights institutions from the African region in 2017 expressed such a welcome perspective, noting that, in Africa, religion was inevitable. There was no process of inclusion and evolution of any type that could happen without faith leaders being one major actor. National human rights institutions could engage with already existing inclusive faith leaders and faith-based organizations that were advocating the rights of all. The positive voices provided opportunities to build on.[6]

20. Recent welcome developments at the national level include a new law enacted by the Parliament of Canada (Bill C-16) expanding protection under the Canadian human rights law to cover transgender persons, including protection from hate speech,[7] and in Germany[8] and Taiwan Province of China,[9] moves towards recognition of same-sex marriage. In India, the Ministry of Drinking Water and Sanitation issued guidelines in April 2017, directed to all states, to allow transgender persons to use the facility of their choice in community or public toilets,[10] and a Ministry of Health and Family Welfare resources kit for adolescents explains that same-sex attraction is

[3] *A.P., Garcon and Nicot v. France*, European Court of Human Rights (6 April 2017).

[4] *Bayev and others v. Russia*, European Court of Human Rights (20 June 2017).

[5] Adopted at the fifty-fifth ordinary session of the Commission, held in Luanda from 28 April to 12 May 2014. Available from www.achpr.org/sessions/55th/resolutions/275/.

[6] Network of African National Human Rights Institutions, *Report of the Face to Face Workshop for Staff of National Human Rights Institutions on Sexual Orientation, Gender Identity and Human Rights* (Nairobi, 2017), pp. 7 and 10. Available from www.nanhri.org/2017/05/11/workshop-report-sogi-and-human-rights-for-the-staff-of-african-nhris/.

[7] Available from www.parl.ca/DocumentViewer/en/42-1/bill/C-16/royal-assent.

[8] Timothy Jones, "Germany's Bundestag passes bill on same-sex marriage", *Deutsche Welle*, 30 June 2017. Available from www.dw.com/en/germanys-bundestag-passes-bill-on-same-sex-marriage/a-39483785.

[9] J. R. Wu, "Taiwan court rules in favour of same-sex marriage, first in Asia", Reuters, 24 May 2017. Available from www.reuters.com/article/us-taiwan-lgbt-marriage-idUSKBN18K0UN.

[10] Dipak K. Dash, "US dithers but India aids third gender with bathroom bill", *Times of India*, 5 April 2017. Available from http://timesofindia.indiatimes.com/india/ensure-toilet-access-to-3rd-gender-centre-tells-states/articleshow/58018540.cms.

normal.[11] Peru introduced a new education curriculum on 1 January 2017 which makes it mandatory to teach about sexual and reproductive rights, abortion, sexual orientation and gender identity, and in March 2017 Japan updated its basic policy for the prevention of bullying, which expressly protects sexual and gender minority students.[12] Several initiatives have also been taken in 2017 to ban "conversion therapy", for example in Taiwan, Province of China,[13] in the State of Victoria (Australia)[14] and in the State of California (United States of America).[15]

B. Intersectionality between sexual orientation and gender identity and other issues concerning violence and discrimination

21. In his first report, the Independent Expert underlined the relationship between sexual orientation and gender identity and other issues, including racism, poverty, migration, disability and other factors. A particular concern to be highlighted here is the plight of children and youth from the perspective of gender diversity. Thus, on the International Day against Homophobia, Transphobia and Biphobia, 17 May 2017, the Independent Expert and a range of United Nations human rights treaty bodies and special procedures, as well as regional mechanisms, issued a joint statement calling for protection of transgender and gender diverse children and adolescents. The following excerpt epitomizes the universal message:

> We call on States to adopt and implement effective measures prohibiting violence, anti-discrimination laws covering gender identity and expression — real or perceived — as well as sexual orientation as prohibited grounds for discrimination, to develop inclusive curriculums and learning materials, training for and support to teachers and other school staff, education and support programmes for parents, safe and non-discriminatory access to bathrooms, and awareness-raising programmes nurturing respect and understanding for gender diversity.
>
> ...
>
> On another front, the mere existence of laws or by-laws criminalizing gender expression including through offences of "cross dressing" or "imitating the opposite sex" and other such discriminatory regulations impact on the liberty and security of these young people, tend to foster a climate where hate speech, violence and discrimination are condoned and perpetrated with impunity.
>
> Criminalization and pervasive discrimination in such context lead to the denial of health care, including safe gender affirming procedures, and to the lack of access to information and related services. Pathologizing trans and gender diverse people — branding them as ill based on their gender identity and expression — has historically been, and continues to be, one of the root causes behind the human rights violations against them.

---

[11] Abantika Ghosh, "Same-sex attraction is OK, boys can cry, girl's no means no", *Indian Express*, 21 February 2017. Available from http://indianexpress.com/article/india/same-sex-attraction-is-ok-boys-can-cry-girls-no-means-no-health-ministry-sex-education-4535410/.

[12] Human Rights Watch, "Japan: anti-bullying policy to protect LGBT students" (24 March 2017). Available from https://www.hrw.org/news/2017/03/24/japan-anti-bullying-policy-protect-lgbt-students.

[13] Chang Ming-hsuan and Kuo Chung-han, "Conversion therapy to be prohibited by regulation", Focus Taiwan News Channel. Available from http://focustaiwan.tw/news/asoc/201701020016.aspx. 3e

[14] Victoria, Australia, Health Complaints Bill 2016. Available from www.legislation.vic.gov.au /domino/Web_Notes/LDMS/PubPDocs_Arch.nsf/5da7442d8f61e92bca256de50013d008/CA257CCA00177A46CA257F54007D8E3C/$FILE/581059exi1.pdf.

[15] Greg Stohr, "Gay-conversion therapy ban survives as Supreme Court rejects appeal", Bloomberg, 1 May 2017. Available from https://www.bloomberg.com/politics/articles/2017-05-01/gay-conversion-therapy-ban-survives-as-high-court-rejects-appeal.

> We reiterate our call for States to decriminalize and depathologize trans and gender diverse identities and expressions, including for young transgender people, prohibit "conversion therapies" and refrain from adopting new criminalizing laws and pathologizing medical classifications, including in the context of the upcoming review of the International Classification of Diseases. We also call on States to provide equal access to health care and access to gender affirming treatment to those who seek it.[16]

22. The Independent Expert has also received submissions from various sources concerning the plight of children and youth in relation to violence and discrimination, such as bullying at home and at school.[17] A variety of issues deserving more attention, ranging from discriminatory sexual consent laws to access to information, conversion therapy, rights of transgender children, rights of intersex children, children of same-sex couples and access to justice have also been raised.[18]

C. Dialogue and cooperation between the Independent Expert and stakeholders

23. Since the first report submitted by the Independent Expert, he has attended a range of conferences and consultations and participated in related activities. For example, he participated in a conference in New York in early 2017 on the role of the business sector in the integration of sexual orientation and gender identity into their policy and practices, as monitored by a gender equality index and as recognized through a number of awards for exemplary performance. Indicators for measuring performance include the need for specific corporate policy reflecting sexual orientation and gender identity at the administrative level as well as in the entire work place, with training for mutual respect and provision of remedies in the case of discrimination. The Independent Expert highlighted the importance of incentivization in the work place, side by side with accountability, as well as integration of the message of non-discrimination throughout the supply chain and interaction with small-scale industries, which are often closest to the general population, particularly in developing countries. When the workplace personifies an environment of non-discrimination and both management and workers feel a sense of inclusion and belonging, there is a key dividend in both economic and social terms, adding to the positive value chain in the global-local dynamic.

24. The Independent Expert took part in a lecture at a seminar for human rights defenders in Manila, highlighting in particular the channels for activating communications through the United Nations special procedures to seek protection and redress. He attended various European activities in relation to the International Day against Homophobia, Transphobia and Biphobia in Brussels, calling for strategic action to overcome violence and discrimination, including the need for human rights-sensitive laws, policies, programmes, case enforcement in the courts, accessible mechanisms and personnel, resources, education and monitoring, data generation, accountability provisions, and networking and mobilization for national reforms to comply with international standards. During the regular session of the Human Rights Council in March 2017, he contributed to a panel on transgender persons, mental health and human rights and advocated the need to engage more strongly with the health sector, particularly on such issues as conversion therapy,

[16] See "Embrace diversity and protect trans and gender diverse children and adolescents", International Day against Homophobia, Transphobia and Biphobia, 17 May 2017. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21622.

[17] Submissions of ASEAN Sexual Orientation, Gender Identity and Expression Caucus and Civil Society Coalition on the Convention on the Rights of the Child to the Independent Expert.

[18] Submission of Child Rights International Network to the Independent Expert.

forced sterilization, medical diagnosis and counselling, all of which might be interlinked with violence and discrimination, as well as the need for comprehensive health care for all. Concurrently, he helped to train human rights defenders from several parts of the world on the issue of sexual orientation and gender identity in a session organized by a non-governmental organization.

25. The Independent Expert underlines the key role of civil society and human rights defenders and the need for more effective action to counter threats and reprisals against them. Of note is a submission to the Human Rights Council by a number of non-governmental organizations earlier this year, in which they called upon States, inter alia:

(a) To review and repeal all laws and policies which, directly or indirectly, criminalize, stigmatize or discriminate against LGBTI defenders;

(b) To ensure the protection of human rights defenders working on issues of sexual orientation, gender identity and expression, and sex characteristics, against any violence, threat, retaliation, de facto or de jure discrimination, pressure or any other arbitrary action perpetrated by the State or non-State actors, in response to their human rights activities;

(c) To remove barriers to the full recognition, registration and/or accreditation of organizations that promote and protect the human rights of persons of diverse sexual orientation, gender identity and expression, and sex characteristics at the national, regional and international levels;

(d) To ensure that organizations working on issues related to sexual orientation, gender identity and expression, and sex characteristics can seek, receive and use funding and other resources from individuals, associations, foundations or other civil society organizations, foreign Governments and aid agencies, the private sector, the United Nations and other entities.[19]

26. The joint submission of non-governmental organizations (see para. 25) echoes similar appeals made to States by a variety of United Nations entities and regional bodies.[20] United Nations programmes already deal with the issue of sexual orientation and gender identity in many parts of the world, which is most welcome. The work of OHCHR on sexual orientation and gender identity continues apace, and a new version of the publication *Born Free and Equal* is due soon.[21] OHCHR support for linkage between international and regional human rights mechanisms was a key input for a meeting between the Inter-American and African systems in 2015, and it is hoped that the linkage will be further strengthened in the future, perhaps to reach out to the Arab and ASEAN systems and other Asian initiatives, such as from South Asia, with lessons learned from other regional systems. Various parts of the global geography need more coverage and capacity-building, including

[19] Joint written statement by non-governmental organizations, May 2017 (A/HRC/35/NGO/119).

[20] See for example A/70/217; A/HRC/7/14/Add.1, A/HRC/10/12, A/HRC/13/22 and Add.3, A/HRC/14/23/Add.1 and Add.2, A/HRC/16/44, A/HRC/17/27/Add.1, A/HRC/26/29 and A/HRC/34/52; African Commission on Human and Peoples' Rights resolution 376 (LX) 2017 (available from www.achpr.org/sessions/60th/resolutions/376/); Organization of American States General Assembly resolution AG/RES. 2908 (XLVII-O/17); and Joint Statement for the International Day against Homophobia and Transphobia, 17 May 2014 (www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14602&LangID=).

[21] See Office of the United Nations High Commissioner for Human Rights (OHCHR), *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (HR/PUB/12/06); and OHCHR, *Living Free and Equal: What States are Doing to Tackle Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex People* (HR/PUB/16/3).

Central and North Asia and the Pacific islands. A variety of research is being carried out to provide more data and analysis of the situation.[22]

27. The Independent Expert is also in touch with the newly established Equal Rights Coalition, which is a coalition of 35 States reaching out to a broad range of partners based on the founding principles of equality, universality, international human rights law and open, respectful and constructive dialogue and cooperation with all stakeholders.

28. At this juncture, the report will now turn to various key underpinnings which interrelate closely with violence and discrimination. Two are singled out for special attention and they are presented below. Other underpinnings will be dealt with, incorporating recent inputs from stakeholders, in future reports of the Independent Expert in 2018.

V. Decriminalization of consensual same-sex relations and gender identity (covering also gender expression)

29. In the past 20 years, approximately 25 countries from all regions have taken steps to decriminalize same-sex relationships between consenting adults. Some of the most recent countries to undertake decriminalization are Belize, Mozambique, Nauru, Palau, Sao Tome and Principe and Seychelles. In some countries the judiciary has opened the way for decriminalization through landmark decisions on specific cases, whereas in other countries decriminalization of same-sex relations has materialized by the actions of the parliament and/or the executive branch through the review of their penal code.

30. The gaps are, however, omnipresent, despite a global trend towards decriminalization of consensual same-sex relationships.[23] More than 70 countries still criminalize same-sex relations,[24] with particular impact on gay and bisexual men and other men who have sex with men.[25] Of those, at least 40 countries criminalize same-sex relations between lesbian and bisexual women and other women who have sex with women. The death penalty may be applied in a number of countries in the African and Asian regions. More particularly, the death penalty is imposed throughout the territory of four countries and in certain provinces of two others, and in two States the death penalty is carried out by non-State actors. In five other States the death penalty could technically be imposed but it is not invoked.[26]

31. In several countries, laws also specifically criminalize transgender persons based on their gender identity or expression. Some countries criminalize so-called

[22] See, for instance, submission of United Nations Development Programme (UNDP) and International Labour Organization (ILO) to the Independent Expert, "Working as LGBTI in Asia: study on employment discrimination based on sexual orientation, gender identity and intersex status in China, the Philippines and Thailand" (Bangkok, forthcoming); submission of the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) to the Independent Expert; submission of Viet Nam context analysis report on lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) rights to the Independent Expert, by Institute for Studies of Society, Economy and Environment (Viet Nam); and submission of COC-Netherlands Federation of LGBT Organizations to the Independent Expert.

[23] See OHCHR, *Living Free and Equal* (HR/PUB/16/3), in reference to Achim Hildebrandt, "Routes to decriminalization: a comparative analysis of the legalization of same-sex acts", *Sexualities*, vol. 17, chap. 3 (2004).

[24] In some cases, provisions do not make explicit reference to same-sex relations but refer to vague and undefined concepts, such as "acts against the order of nature".

[25] See Aengus Carroll and Lucas Ramón Mendos, *State-Sponsored Homophobia*, 12th ed. (International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA), May 2017). The Independent Expert also received a submission from Human Rights Watch.

[26] See Carroll and Mendos, *State-Sponsored Homophobia*.

"cross-dressing", while many others criminalize different forms of gender identity and expression though often vaguely defined laws, leading to various human rights violations of transgender people, including arbitrary arrests and detention.

32. The criminalization of consensual same-sex relations between adults of the same sex violates States' obligations under international law, including the obligation to protect privacy and to guarantee non-discrimination.[27] Such violations occur even when the law is not enforced.[28] As such, arrests and detentions on the basis of sexual orientation, gender identity or expression are to be considered arbitrary.[29] The imposition of the death penalty for offences related to homosexuality violates the right to life as it does not pass the qualification criteria of "most serious crimes", as provided for in article 6 of the International Covenant on Civil and Political Rights. Criminalization of same-sex relations also fuels stigma, legitimizes prejudice and exposes people to family and institutional violence and further human rights abuses such as hate crimes, death threats and torture. All such provisions should be repealed.[30]

33. As highlighted in some contributions, laws and policies which criminalize same-sex relationships and gender identity, particularly in regard to its expression, directly lead to violence and discrimination, and are also part of the background environment in which they take place. They also stymie efforts to prevent and reduce HIV transmission.[31] Conversely, inclusion policies and practices help to overcome discrimination and contribute to the realization of the Sustainable Development Goals.[32]

34. There are other laws and policies of a more indirect nature that might also be negatively applied to certain groups and persons in relation to sexual orientation and gender identity. They include laws based on public decency, public health and security, at times in the guise of local criminal laws and regulations. For examples, transgender women are often targeted and prosecuted on the basis of laws criminalizing sex work, or under laws against "vagrancy".[33] There are equally challenging implications of various religious laws when applied strictly.

35. It should be noted that in some countries where these negative laws exist, they are not applied or not much applied in practice. While this is a stepping stone to mitigation of the situation, the mere existence of the laws still gives rise to bias and prejudices, feeding into extortion, persecution, multiple and intersectional phobia, and other forms of violence and discrimination, and violates international human rights norms and standards. The call to reform such negative laws must therefore be vigorous.

36. On another front, there may also be a need for some criminal laws to tackle violence and discrimination, for example in regard to hate crimes and incitement to hatred, and they should reflect international standards. The situation varies from

[27] See Human Rights Committee, communication No. 488/1992, *Toonen v. Australia*, views adopted on 31 March 1994; and CCPR/C/ETH/CO/1. This position has been reaffirmed on many occasions by United Nations human rights treaty bodies and special procedures mandate holders.

[28] See *Toonen v. Australia*.

[29] See also Human Rights Committee, general comment No. 35 (2014) on liberty and security of person.

[30] See also OHCHR, *Living Free and Equal* (HR/PUB/16/3); UNAIDS, *The Gap Report* (Geneva, 2014); and Transgender Europe, Trans Respect versus Transphobia. Maps available from http://transrespect.org/en/.

[31] Submission of Global Forum on Men Who Have Sex with Men and HIV (USA) to the Independent Expert.

[32] Submission of Mildmay (Kenya) to the Independent Expert.

[33] See for example UNAIDS, *The Gap Report*, and OHCHR, *Living Free and Equal*.

countries that criminalize same-sex relations to those that do not.[34] There is a need for protection against incitement to hatred in all countries, including in those where same-sex relations are not criminalized.[35] The Independent Expert hopes to explore the broader interface between criminal law, related laws and sexual orientation and gender identity in a future report.

37. The table illustrates recent constructive developments showing how some countries have managed to change their laws concerning prohibition of same-sex relations which were contrary to international standards.

38. The checks and balances at the national level are particularly interesting, as seen in regard to the role of various pillars of the State which can activate the reform process. Behind all this, the important role of non-governmental organizations, human rights defenders and independent national human rights institutions should not be underestimated.

Examples of reform of criminalization of consensual same-sex relations, 2012-2016

Year of reform	Country	Old law	Who propelled reform	Current law situation
2012	Lesotho	Article 185(5) of the 1939 Criminal Procedure and Evidence Act states that any person charged with sodomy or assault with intent to commit sodomy may be found guilty of indecent assault or common assault, if such be the facts proved. In addition, the Act mentions "sodomy" as among the offences in respect of which arrests may be made without warrant.	Parliament On 2 January 2012, Parliament enacted the Penal Code Act 2010, revising the country's penal code (in effect since 9 March 2012).	New penal code removed references to sodomy
2014	Palau	Section 2803, chap. 28, "Sex crimes", of title 17 of the Palau National Code 1990 states that every person who shall unlawfully and voluntarily have any sexual relations of an unnatural manner with a member of the same or the other sex, or who shall have any carnal connection in any manner with a beast, shall be guilty of sodomy, and upon conviction thereof shall be imprisoned for a period of not more than 10 years; provided, that the term "sodomy" shall embrace any and all parts of the sometimes written "abominable and detestable crime against nature".	Parliament and President New penal code of April 2014	New penal code did not contain any prohibitions on consensual same-sex sexual activity

[34] Submission of Collaboration Foundation for Aids and Observatoire national des droits des personnes LGBTI et de leurs défenseurs (Cameroon) to the Independent Expert.

[35] Submission of Hyestart Association (Armenia) to the Independent Expert.

Year of reform	*Country*	*Old law*	*Who propelled reform*	*Current law situation*
2015	Mozambique	Articles 70 and 71 of the former colonial penal code of 1886; article 70 mentions the types of security measures. Article 71 pertains to the application of security measures on those habitually practising vices against nature.	Parliament and President On 11 July 2014, the parliament passed by consensus Law 35/2014, replacing the 1886 penal code. The new penal code came into force on 29 June 2015.	New penal code has dropped references to "vices against nature"
2016	Seychelles	Article 151 of the 1955 penal code states that any person who (a) has carnal knowleuge of any person against the order of nature, or (b) has carnal knowledge of an animal or (c) permits male person to have carnal knowledge of him or her against the order of nature is guilty of a felony and is liable to imprisonment for 14 years.	Parliament and President On 15 May 2016, the parliament adopted the Penal Code (Amendment) Act 2016, signed on 1 June 2016 by the President. The proposal for the amendment came 3 months after the public announcement by the President that his Government would introduce a bill to abolish section 151, based on his country's 2011 commitment to the Working Group on the Universal Periodic Review to decriminalize homosexuality.	Penal Code (Amendment) Act 2016 repealed article 151 (a) and (c)
	Belize	Section 53 of the former criminal code states that every person who has carnal intercourse against the order of nature with any person or animal shall be liable to imprisonment for 10 years.	Supreme Court In August 2016, in the case *Caleb Orozco v. The Attorney General of Belize*, the Supreme Court ruled as unconstitutional section 53 of the criminal code.	Para. 99 of the judgment of the Supreme Court states that it is therefore ordered that the following sentence be added to section 53 of the criminal code, chap. 101: "This section shall not apply to consensual sexual acts between adults in private".

Source: Extract from research conducted by the Independent Expert, in collaboration with OHCHR.

39. Several States have also taken steps to decriminalize transgender persons on the basis of their gender identity or expression. For example, Samoa removed provisions on "impersonation of a female" that were used to arrest and fine transgender persons and the fa'afafine when it revised its penal code in 2013.

40. Constructive lessons can be gauged from the following recent submissions to the Independent Expert. National human rights institutions have played a key role in advocating for the repeal of discriminatory laws in all regions of the world. For example, the Asia Pacific Forum of National Human Rights Institutions offers networking and capacity-building as channels for addressing the issue of sexual orientation and gender identity, and the Forum has been assisted by the advice of its Advisory Council of Jurists in favour of decriminalization of consensual same-sex relations.[36]

41. The Australian Human Rights Commission noted that consensual same-sex between adults had never been regulated by federal criminal law; however, it was previously a criminal offence in all Australian states and territories. In 1994 the federal Parliament passed the Human Rights (Sexual Conduct) Act 1994, which provided that sexual conduct involving only consenting adults in private was not to be subject, by or under any law of the Commonwealth, a state or a territory, to arbitrary interference with privacy within the meaning of article 17 of the International Covenant on Civil and Political Rights.[37]

42. The Human Rights Commission of Malaysia pointed out that, given the sensitivities surrounding issues relating to LGBTI rights in Malaysia, it had adopted a step-by-step approach in addressing such issues. In August 2010, the Commission organized a meeting with various Islamic groups with the objective of gaining a better understanding of Islamic perspectives of LGBTI and of substantiating Islamic sensitivities and views regarding such LGBTI actions as same sex intercourse, cross dressing, imitation of the opposite gender and gender reassignment. The application of the principles of non-discrimination under the Federal Constitution on LGBTI was also discussed. The meeting was followed by a roundtable discussion in 2011 during which participants raised some issues related to sexual minorities, including the need to protect sexual minorities from violence through legal and other forms of protection and redress, to recognize transgender persons by ensuring an enabling environment and to review relevant laws to prevent discrimination, for example through the inclusion of sexual orientation and gender identity as a grounds for discrimination in article 8(2) of the Federal Constitution.[38]

43. The Human Rights Commission of New Zealand noted that, in New Zealand, criminal sanctions for same-sex behaviour between consenting adults had been removed 31 years ago, with the enactment of the Homosexual Law Reform Act 1986. Nor is gender diversity criminalized, as New Zealand does not have so-called "cross dressing" laws that criminalize gender expression.[39]

44. The national human rights institution of Cyprus observed that consensual same-sex relations were decriminalized in 1998. They remarked that society was still conservative on sexual orientation and gender identity, but stated that, following systemic reports of the institution but also interventions on individual complaints and participation in the respective discussions in the parliament, positive developments had taken place in significant key areas. They included the legal recognition of same-sex relationships (Civil Union Law of 2015); the penalization of homophobic and transphobic hate speech (Law 87(I) 2015 amending the Penal Law) and hate crime (with the homophobic and transphobic motive as aggravating factor, Law 31 (I) 2010 amending the Penal Law).[40]

[36] Submission of Asia Pacific Forum to the Independent Expert.
[37] Submission of Australian National Human Rights Commission to the Independent Expert.
[38] Submission of Human Rights Commission of Malaysia to the Independent Expert.
[39] Submission of Human Rights Commission of New Zealand to the Independent Expert.
[40] Submission of national human rights institution of Cyprus to the Independent Expert.

45. In their submissions to the Independent Expert, civil society organizations have also highlighted important advances and remaining challenges. A non-governmental organization submitting information on China noted that the old "hooligan crime", which had had an impact on same-sex relations between men, had now been reformed, while gender identities were not criminalized in the country.[41] There remained issues of implementation, for example, in the employment sector, particularly in relation to transgender persons.

46. With regard to Africa, in recognizing that some 33 countries criminalize same-sex relations, out of 54, with many of the negative laws on this front a result of the remnants of colonization, constructive developments should also be identified. In the interim South African Constitution, sections 9(1) and 9(3) make express reference to sexual orientation as a protected ground for non-discrimination. In the famous case of *S v. Kampher*, Justice Ian Farlam nullified the conviction of a man who had confessed to having consensual sex with another man. Immediately after that, the Constitutional Court in *National Coalition for Gays and Lesbian Equality and another v. Minister for Justice and others* held that the South African "sodomy" laws were unconstitutional. In decriminalizing sodomy laws, the Court stated that prohibiting sexual conduct between gay men violated the right to equality. Other positive developments in Africa worth noting include the reform of the Cape Verde penal code of 2004, which eliminated offences related to same-sex activity[42] and the decriminalization of homosexuality in Sao Tome and Principe in 2014. On a particularly positive note, a number of African countries have introduced legislation to explicitly outlaw discrimination on the basis of sexual orientation or they have removed discriminatory provisions of existing employment legislation, including Seychelles in 2006, Mozambique in 2007, Mauritius in 2008 and Botswana in 2010. Several sub-Saharan African countries had never criminalized same-sex sexual activities between adults, including Burkina Faso, the Central African Republic, the Congo, Côte d'Ivoire, the Democratic Republic of the Congo, Gabon, Madagascar, Mali, the Niger and Rwanda.[43]

47. In Kenya, civil society organizations have made a number of recommendations to the authorities, inter alia: the immediate repeal of sections 162(a) and (c) and 165 of the penal code; the introduction of legislation to criminalize hate speech and incitement to violence on grounds of sexual orientation and gender identity, and expression; An immediate ban on forced anal examinations; and prosecution to the full extent of the law of all persons suspected of committing acts of violence, including incitement to violence, on grounds of sexual orientation, gender identity and expression.[44]

48. In regard to criminal laws on cross-dressing and other laws with a negative impact on the human rights of transgender persons, a non-governmental submission provided much insight, pointing out that criminalization heavily impacted transgender and gender diverse people. They welcomed the reference in the first report to criminalization of so-called "cross-dressing". However, there are many other types of gender identity and expression-based criminalization, including "impersonation" provisions as well as inconsistent or unjust implementation of laws on beggary, HIV, sex work, nuisance and loitering in ways that are punitive to transgender persons, most especially toward transgender women. In countries with

[41] Submission of a non-governmental organization in China to the Independent Expert.

[42] Submission of Centre for Human Rights, Faculty of Law, University of Pretoria, to the Independent Expert.

[43] Ibid.

[44] Submission of Kenya Human Rights Commission, National Gay and Lesbian Human Rights Commission, Network for Adolescent and Youth of Africa, Gay and Lesbian Coalition of Kenya and East Africa Trans Health and Advocacy Network to the Independent Expert.

mandatory military conscription, transgender women who have not been able to change their gender markers and transgender men may face legal or economic consequences in that context. Transgender people may in fact be affected by laws criminalizing same-sex relations, whether or not they are in such a relationship. In many countries, transgender women are perceived as men and transgender men are perceived as women, therefore, a transgender woman with a male partner or a transgender man with a female partner is also included within the criminalization of same-sex conduct. Additionally, there are gay, lesbian, and bisexual transgender persons, who are also targets of those laws and policies. Furthermore, transgender persons are often targeted because of their gender expression, as it is commonly used to assume a person's sexual orientation.[45]

VI. Effective anti-discrimination measures

49. Even though human rights are inherent to everyone and involve protection for all persons without exception, persons with an actual or perceived sexual orientation or gender identity diverging from a particular societal concept of sexual orientation and gender identity are at times targeted for violence and discrimination, and violations are pervasive in numerous settings.

50. Full enjoyment of human rights by such persons is a longitudinal challenge, starting in the home and extending to the educational system, the work place and life beyond. Discrimination is also intersectional. Many countries are, however, still hampered by the lack of or insufficiency of anti-discrimination measures, which is linked with the environment leading to violence and discrimination. There is thus a need for effective anti-discrimination measures covering both the public and private spheres, and of a comprehensive kind: not only formal but substantive, not only de jure but also de facto, in addition to the building of a community open to understanding and respecting sexual and gender diversity.

51. Positive developments can be seen in several countries in regard to the adoption of laws and other measures integrating sexual orientation and gender identity as part and parcel of the right to be free from discrimination and the right to equality before the law. Anti-discrimination laws come in various shapes and sizes.[46] For instance, sexual orientation and gender identity might be integrated directly into the constitution, as in the reform of the Constitution in 2008 in Ecuador.[47] South Africa was the first country globally to include protection against discrimination in relation to sexual orientation in its Constitution in 1996, while Fiji was the first country to explicitly incorporate sexual orientation, gender identity and gender expression as protected characteristics in its Constitution in 2013. To date, the constitutions of the Plurinational State of Bolivia and Malta are the only two to explicitly include both sexual orientation and gender identity as non-discrimination grounds. There might be a general law on non-discrimination, such as Thailand's gender equality law, which incorporates the notion of "sex expression" to cover gender identity and related expression. Alternatively, there could be even more specific laws with provisions providing sexual orientation and gender identity protection in key contexts, such as employment, education, health care, housing, provision of goods and services, inheritance, recognition of relationships and family law or immigration. To be effective, anti-discrimination frameworks should provide

[45] Submission of Global Action for Trans* Equality (https://transactivists.org/) to the Independent Expert.

[46] See Aengus Carroll and Lucas Ramón Mendos, *State-Sponsored Homophobia*, 12th ed. (International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA), May 2017).

[47] Submission of Observatorio Ciudadano GLBTI (Ecuador) to the Independent Expert.

for effective measures to investigate alleged violations, redress for victims and accountability for alleged perpetrators.[48]

52. Despite significant advances, important gaps remain, in particular when it comes to measures aimed at protecting discrimination based on gender identity and expression, as illustrated by the fact that fewer than half of the countries which offer legal protection from discrimination explicitly include transgender identities as grounds for discrimination.[49] In addition, only a few States prohibit discrimination in all spheres of life; some legislation fails to cover the private sector; and other laws are not properly enforced.

53. Responses to the Independent Expert's invitation to stakeholders to send in information in 2017 have provided the following examples:

(a) In Sweden, the Discrimination Act prohibits discrimination in relation to sexual orientation and gender identity (and other grounds). There is an equality ombudsman to monitor implementation of the law and various criminal law provisions against homophobic speech and discriminatory statements. If the motive for the offence is related to sexual orientation and gender identity, this is an aggravating circumstance for more severe sanctions. New legislation is being discussed for stronger protection for transgender persons in relation to hate speech and hate crime, as well the issue of privacy;[50]

(b) The legal infrastructure of the United Kingdom of Great Britain and Northern Ireland illustrates the range of possibilities. The 2003 Employment Equality (Sexual Orientation) Regulations prohibited discrimination in employment in relation to sexual orientation. Its 2007 Equality Act (Sexual Orientation) Regulations prohibited discrimination on grounds of sexual orientation in the provision of goods, facilities and services, education, housing and public functions. The 2010 Equality Act then included more generally "sexual orientation" among the protected characteristics;

(c) The Commission on Human Rights of the Philippines noted important inputs at the local municipal levels. In addition to its ground-breaking democratic Constitution of 1987 and its Magna Carta of Women, there are also various by-laws on non-discrimination.[51] For example, Quezon City Council in the Philippines adopted an ordinance prohibiting discrimination based on sexual orientation or gender identity and expression;

(d) The Ombudsman of the Plurinational State of Bolivia noted both constitutional provisions on sexual orientation and gender identity as well as range of local by-laws on this front.[52] By contrast, the Equal Opportunities Commission of Hong Kong, China, observes that there is currently no comprehensive anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status to ensure legal protection against discrimination for LGBTI persons;[53]

(e) The National Human Rights Commission of Mexico indicated that hate crimes related to sexual orientation and gender identity are considered aggravating

[48] See OHCHR, *Living Free and Equal* (HR/PUB/16/3).

[49] Based on data from Trans Respect versus Transphobia, Transgender Europe (2016). Of the 55 mapped countries/territories which offer legal protection from discrimination, 26 explicitly include trans people. Available from http://transrespect.org/en/map/anti-discrimination/?submap=trans-identities-explicitly-included.

[50] Submission of Sweden to the Independent Expert.

[51] Submission of Commission on Human Rights of the Philippines to the Independent Expert.

[52] Submission of Ombudsman of the Plurinational State of Bolivia to the Independent Expert.

[53] Submission of Equal Opportunities Commission, Hong Kong, China, to the Independent Expert.

circumstances which can give rise to more severe penalties. Issues relating to sexual orientation and gender identity might also be covered by its law on violence against women. The country also has various protocols to help guide the authorities on how to deal with sexual orientation and gender identity situations in an empathetic manner, such as the protocol for judicial operators, including judges and prosecutors, issued by the Supreme Court on this topic;[54]

(f) Germany has an anti-discrimination law covering sexual orientation and gender identity. There is emphasis on implementing the criminal law against hate crimes based on sexual orientation. It is now drafting its national plan against racism which will also cover the issue of transphobia and homophobia.[55] It is complemented by a new law to give compensation to those who were punished for consensual same-sex relations under the Third Reich;

(g) Greece noted that anti-discrimination measures include criminal sanctions in the case of hate crimes and hate speech in relation to sexual orientation and gender identity.[56] This is now complemented by a new law recognizing civil partnership for same-sex couples, and the abolishment of article 347 of the criminal code, which provided a higher age of consent for male homosexual acts;

(h) Switzerland stated that its Constitution has an anti-discrimination provision covering all forms of discrimination, including sexual orientation and gender identity. Civil partnership has been recognized since 2007. Revision of the adoption law in 2016 opens the door to stepchild adoption for same-sex couples. Change of name is also possible in this regard;[57]

(i) In stating that same-sex relations are not criminalized in the country, Slovakia observed that the Constitution regulates the principle of equal treatment for all and there is also a national strategy for human rights promotion.[58] Slovenia cited the new Protection against Discrimination Act 2016 which covers, inter alia, sexual orientation, sexual identity or sexual expression. Sexual orientation is also reflected in the Employment Relationship Act.[59] Poland called attention to both the civil law and criminal law.[60] There is an anti-discrimination act of 2010 which covers sexual orientation, while the penal code covers incitement to hatred and violence, encompassing sexual orientation and gender identity. This is paralleled by labour legislation, a national programme for equal treatment and data collection;

(j) Spain noted that non-discrimination has been integrated into a variety of regional legislation, complemented by criminal provisions against hate crimes. There are a means for registration of hate-related incidents; special prosecutions in this regard; and a protocol of action for police officers in relation to crimes of hatred and discrimination;[61]

(k) A source indicated that, in Ukraine, proposals to introduce laws in the form of the so-called "homosexuality anti-propaganda law" and based on "traditional family values" were withdrawn in 2015, and the legal framework has become more supportive of sexual orientation and gender identity;

(l) While noting the criminal law impacting sexual orientation, a non-governmental source in Pakistan illustrated the varying context in the country,

[54] Submission of National Human Rights Commission of Mexico to the Independent Expert.
[55] Submission of Germany to the Independent Expert.
[56] Submission of Greece to the Independent Expert.
[57] Submission of Switzerland to the Independent Expert.
[58] Submission of Slovakia to the Independent Expert.
[59] Submission of Slovenia to the Independent Expert.
[60] Submission of Poland to the Independent Expert.
[61] Submission of Spain to the Independent Expert.

with measures from the authorities relating to gender identity, including the formation of a national task force by the federal ombudsman and a protection policy for transgender and intersex persons being drafted by the National Commission for Human Rights in cooperation with the transgender community;[62]

(m) A non-governmental organization from India highlighted the key role of the courts in relation to sexual orientation and gender identity, reporting *National Legal Services Authority v. Union of India (NALSA)*, a landmark decision (on respect for gender identity) by the Supreme Court on 15 April 2014; it came at an extremely adverse time for the community, which was still reeling from the disappointing *Kumar Kaushal v. Naz Foundation* judgment by the same court, which upheld section 377 (criminalizing same-sex relations). The NALSA decision became a critical instrument for the fundamental and constitutional rights of the community to remain within the legal discourse;[63]

(n) A non-governmental organization noted that the law on violence against women in Colombia 2008 covers violence against lesbian and bisexual women.[64] There is also intersectionality with conflict and land restitution issues and action against racism. In Latin America, the legalization of civil unions and/or marriage is also a constructive sign of the times; same-sex marriage is legal in a large number of countries, including Argentina, Brazil, Colombia, Mexico and Uruguay;[65]

(o) A non-governmental organization from Peru observed that the Constitutional Tribunal in 2016 helped to resolve the situation of transgender persons by underlining that it is not a pathological condition and that human rights must be respected on the basis of equality for all and without discrimination;[66]

(p) A non-governmental organization source from the United Kingdom recalled the advent of the same-sex marriage law in the country and the Equality Act. However, the mission of the latter is incomplete; the source stated that the use of the term "gender reassignment" in the Act was proving problematic, and that many people thought trans identity implied a binary surgical transition, which the Act's definition also implies. Transgender persons' vulnerability to discrimination and right to equality does not and should not, depend on medical transition;[67]

(q) As reported by the Australian Human Rights Commission, the country's Sex Discrimination Act 1984 was amended by Act. No. 98 of 2013 to include protections against discrimination on the basis of sexual orientation, gender identity, intersex status and relationship status in the areas of employment, education and goods, and services and facilities, but it provided for some exceptions where the conduct is committed by voluntary bodies, religious bodies, educational institutions established for religious purposes and in sport. Despite the Government's commitment to remove those exemptions, the Commission noted that a number of significant and concerning inconsistencies remain between the Sex Discrimination Act and state and territory laws; particularly with respect to anti-discrimination and equal opportunity laws;[68]

(r) The submission from the human rights Ombudsman of Guatemala called for more explicit integration of sexual orientation and gender identity into the legal

[62] Submission of Right Here, Right Now (Pakistan) to the Independent Expert.
[63] Submission of Alternative Law Forum (India) to the Independent Expert.
[64] Submission of Colombia Diversa (Colombia) to the Independent Expert.
[65] In Mexico a Supreme Court ruling effectively paves the way for recognition in all Mexican states, but the implementation of the ruling is not direct and requires action at the individual state level.
[66] Submission of PROMSEX (Peru) to the Independent Expert.
[67] Submissions of Galop and Stonewall (United Kingdom) to the Independent Expert.
[68] Submission of Australian Human Rights Commission to the Independent Expert.

framework as well as measures to counter the violence in the country.[69] The extensive violence is much highlighted by non-governmental organization sources.[70] Lack of knowledge of the law and difficult access to justice may also hamper implementation of a State's anti-discrimination law.[71]

54. The Independent Expert recognizes that participation by LGBTI groups in a variety of professions and positions can also generate role models which can help to overcome stereotypes and prejudices. Countries could consider, for example, how many LGBTI persons have access to employment opportunities, such as in the judiciary and the police, which could be part of the economic and social dividend. Specifically, how many transgender judges have been appointed?

VII. Conclusions and recommendations

55. **The present report builds upon the first report submitted by the Independent Expert in April 2017. Recent developments, particularly in regard to development of human rights law and practice at the international and national levels, intersectionality between sexual orientation and gender identity and other issues concerning violence and discrimination, dialogue and cooperation between the Independent Expert and stakeholders, are considered.**

56. **Two of the various underpinnings introduced in the Independent Expert's first report are singled out for particular attention to help to prevent and overcome violence and discrimination: namely, decriminalization of same-sex relations and gender identity and expression; and effective anti-discrimination measures. The future reports of the Independent Expert, in 2018, will delve into the issues of legal recognition of gender identity; destigmatization linked with depathologization; socio-cultural inclusion; and promotion of education and empathy.**

57. **In regard to the first underpinning, it is most disconcerting that a number of countries criminalize consensual same-sex relations as well as gender identity and its expression. As identified by the Independent Expert, constructive changes are possible, and checks and balances at the national level, together with the role of civil society, non-governmental organizations and national human rights institutions, help to energize the path to reform and compliance with international standards.**

58. **In regard to the second underpinning, anti-discrimination laws and policies can appear in various forms: sometimes general, sometimes specific. Even with a law, there is a need to ensure effective practical implementation, which is correlated with the need for a holistic approach, interlinking laws and policies with responsive programming, case enforcement in the courts (coupled with strategic advocacy and litigation), effective and accessible mechanisms for human rights protection, resource allocation, information and data generation, education and capacity-building, accountability and redress, and space for networking, mobilization and participation for reform.**

59. **The following initial recommendations invite constructive responses from a variety of actors, including States, in cooperation with other stakeholders:**

[69] Submission of Procurador of Guatemala to the Independent Expert.

[70] Submissions of OASIS Guatemala, HIVOS (Guatemala) and Plataforma Internacional contra la impunidad (Guatemala) to the Independent Expert.

[71] Submission by the project "Iguales ante la ley" of Capacitación y Derechos Ciudadanos — CDC (Plurinational State of Bolivia) to the Independent Expert.

(a) States are encouraged to ratify the core international human rights treaties (if they have not yet done so) and to implement them fully, including in regard to respect for sexual orientation and gender identity, in cooperation with other partners. States are urged to follow up the various recommendations under the universal periodic review and from the United Nations treaty bodies and special procedures effectively to ensure improved protection from violence and discrimination based on sexual orientation and gender identity;

(b) The Sustainable Development Goals offer an opportunity to tackle violence and discrimination, also in regard to sexual orientation and gender identity, and that opportunity should be maximized to ensure that no one is left behind without exception or distinction. They are also an avenue for Governments and other actors to generate data and information in a disaggregated manner so as to facilitate future planning and allocation of resources;

(c) There is a need to build checks and balances, especially at the national level, to prevent abuse of power and to ensure compliance with human rights. States should explore collaboration not only with the executive branch of Government, but also with parliamentarians, the judiciary and other actors who may assist in weighing the various actions at the national level to ensure respect for international human rights standards;

(d) States should explore more cooperation with independent national human rights institutions, such as national human rights commissions and ombudspersons, to interlink between international norms and national settings. Those institutions should be supported as part of the checks and balances to prevent and overcome abuses of power and human rights violations, as well to access justice and remedies. They should be paralleled by regional systems and initiatives to help to advance protection against violence and discrimination based on sexual orientation and gender identity;

(e) The work of human rights defenders and the much needed space for civil society, including non-governmental organizations and lesbian, gay, bisexual, transgender and intersex groups and persons, calls for more effective safeguards from States against incursions and reprisals from those protagonists, whether State or non-State actors, which act inconsistently with international human rights standards. Cooperation with a multiplicity of actors, including the business sector, the medical/scientific sector, religious and faith groups and the media, including social networks, should be fostered on the basis of international human rights law;

(f) The role of United Nations bodies, including the Office of the United Nations Commissioner for Human Rights and the General Assembly, is pivotal in raising the issue of violence and discrimination and in addressing it through integrated measures, with due regard to the recommendations from the United Nations human rights mechanisms, including the Independent Expert, as an impetus for follow-up action. The work of the Office and United Nations human rights presences is important and needs to be bolstered in countries and regions where there are major gaps in human rights protection. That work should be complemented by the catalytic role of United Nations country teams and inter-agency cooperation to help to ensure integration of issues relating to sexual orientation and gender identity into programming and practices;

(g) States should reform the laws, policies and practices which criminalize consensual same-sex relations, laws that criminalize transgender persons in relation to gender identity and its expression and other vague laws used to arbitrarily detain and harass LGBT persons. Pending reform, the

preferred policy is to desist from applying such negative laws and policies. That is only an interim measure and is not a substitute for the needed reform, which should be undertaken efficaciously, guided by international human rights law. States should also take stock of other laws, policies and practices which may have a negative impact on people based on their sexual orientation and gender identity, such as laws on public decency/morality and local practices, coupled with relevant reform to reflect international standards;

(h) Adoption of effective anti-discrimination measures by States is critically needed; these measures vary from laws to policies and other action in a comprehensive and human rights-responsive setting. They are tested by access to justice and accessible means of redress, as well as a preventive strategy based on mobilizing the community to understand sexual orientation and gender identity and the call for inclusivity to accord protection to all persons without violence and discrimination;

(i) States should ensure that a variety of stakeholders adopt educational and capacity-building measures in regard to sexual orientation and gender identity to nurture empathy towards the diversity inherent to humanity, from a young age. They should also strengthen capacity-building of law enforcers and related personnel, including through integration of sexual orientation and gender identity into their training and educational curriculum, to enhance understanding for sexual and gender diversity.

60. The Independent Expert looks forward to interlinking consistently with a broad range of stakeholders at the national, regional and international levels, and to embracing diversity and energizing humanity, grounded in the commitment to multilateralism and international law, with the traction for catalytic cooperation and positive change.